

S. Hrg. 116-431

BORDER SECURITY—2019

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

UNPRECEDENTED MIGRATION AT THE U.S. SOUTHERN BORDER: BY
THE NUMBERS, APRIL 4, 2019

UNPRECEDENTED MIGRATION AT THE U.S. SOUTHERN BORDER:
PERSPECTIVES FROM THE FRONTLINE, APRIL 9, 2019

UNPRECEDENTED MIGRATION AT THE U.S. SOUTHERN BORDER:
THE EXPLOITATION OF MIGRANTS THROUGH SMUGGLING, TRAF-
FICKING, AND INVOLUNTARY SERVITUDE, JUNE 26, 2019

ROUNDTABLE: UNPRECEDENTED MIGRATION AT THE U.S. SOUTH-
ERN BORDER: BIPARTISAN POLICY RECOMMENDATIONS FROM
THE HOMELAND SECURITY ADVISORY COUNCIL, JULY 17, 2019

UNPRECEDENTED MIGRATION AT THE U.S. SOUTHERN BORDER:
WHAT IS REQUIRED TO IMPROVE CONDITIONS?, JULY 30, 2019

UNPRECEDENTED MIGRATION AT THE U.S. SOUTHERN BORDER:
THE YEAR IN REVIEW, NOVEMBER 13, 2019

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Committee on Homeland Security and Governmental Affairs



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UNPRECEDENTED MIGRATION AT THE U.S. SOUTHERN BORDER: BY THE NUMBERS

THURSDAY, APRIL 4, 2019

**U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
*Washington, DC.***

The Committee met, pursuant to notice, at 9:31 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Portman, Lankford, Romney, Scott, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. This hearing will come to order.

I want to thank the witnesses for taking the time to testify, for taking the time to write your testimony, by the way. I have read it all. It is excellent, doing exactly what I was hoping we could do in this hearing, the first step in the problem-solving process, and we are well into many steps of this first step, though. This is close to 30 hearings we have held on some aspect of border security. But it is about gathering information, describing reality, trying to define the problem, do some root-cause analysis, and then the next step would be to define an achievable goal. There are all kinds of things we can try. What is an achievable goal before we really start talking about solutions?

I want to thank Senator Peters, who I really look forward to being a good partner in trying to go through that process and actually starting to solve this problem. We are not going to solve all the problems of the world, but I think this is one we can get our arms around.

I do have a chart¹ that is certainly describing the magnitude of the problem. I have been building this over the last couple years. It shows a number of things, but it shows unaccompanied alien children (UAC) from Central America as well as people coming to this country illegally and being apprehended at the border as family units—two particular groups where we have laws on the books that really are loopholes that are being exploited. And you can see the results.

Prior to 2012, we only had about 3,000 or 4,000 unaccompanied children from Central America come to this country illegally and

¹ The chart referenced by Senator Johnson appears in the Appendix on page 86.

were apprehended. In 2012, the Deferred Action for Childhood Arrivals (DACA) memorandum, it does not apply to anybody in the future, but it was used by coyotes as an incentive. They said, “Go to America. You get the permiso slip,” which is really the notice to appear (NTA). Again, reasonable people can disagree. I personally think that kind of sparked this, was a catalyst for what we see in the ensuing years. You can see in 2013, 36,000 individuals in those two categories. 2014, the year that President Obama declared a humanitarian crisis and Customs and Border Protection (CBP) was overwhelmed at that point in time, 120,000 unaccompanied children and individuals as family units came to this country illegally.

And then the Obama Administration, obviously recognizing it as a real problem, started detaining children with their families, and that was a consequence. And you can see in 2015, that consequence, I would argue, reduced the flow and cut it almost in half.

But then the Obama Administration was taken to court, and I think Secretary Jeh Johnson completely disagreed with the ruling but said that the *Flores* Agreement applied to not only unaccompanied children but accompanied children as well, and so the Obama Administration had to make a choice. Are we going to enforce the law, which would require us to separate children from their families? They chose, no, we are not going to do that, and that began what is commonly referred to as “catch-and-release,” which sparked even further.

Candidate Trump obviously talked tough on the border. I think maybe that might be a little bit of why you see a downturn in 2017 when he first took office. But once the cartels, once the coyotes, once the individuals who want to come to this country realized that nothing had really changed in American immigration laws, they could still be fully exploited, the problem has really exploded.

What is interesting about this chart is you have to realize this is all fiscal years (FY), and this exponential growth in people coming in as unaccompanied children and family units, the final year is not a full year. The approximately 240,000 individuals, now primarily people coming as family units, primarily illegally—we have added a new category of people coming in by the port of entry (POE) borders. That is the light blue and the little green line up there. Very few are really presenting at the ports of entry because it is a lot easier, it is a more streamlined process to come in illegally. In just the first 6 months of this year, not quite 6 months, we are over 240,000. We have doubled the full year figure from 2014 when President Obama declared that legitimately a humanitarian crisis. We have doubled that in less than the first 6 months.

I think by anybody’s definition this is a real problem. I was interested to see Secretary Jeh Johnson on “Morning Joe” last Friday describing when he came into work, if it was less than 1,000 apprehensions, it was an OK day. But if detentions or apprehensions were more than 1,000, it was going to be a really bad day. We have had days over 4,000 apprehensions in the recent weeks. This is a problem. We have to deal with it.

As you can see, in 2014 or 2015, a reduction, a consequence actually has an effect. The Department of Homeland Security (DHS) Secretary Michael Chertoff recognized the exact same thing back in 2005. Back then, 2003, there were about 5,200 Brazilians getting

into Mexico and coming into America illegally through the Southwest Border. In 2004, it was 8,800. In 2005, that more than tripled to 31,000. Secretary Chertoff realized this was a problem and he had to do something about it. In response, DHS dedicated bed space. They detained and they initiated a program of expedited removal. Other Brazilians called it "Texas Hold 'Em." By doing that, the next year only 1,400 people came illegally. And to quote Secretary Chertoff, he said, "The word spread surprisingly swiftly; within its first 30 days, the operation had already begun to deter illegal border crossings by Brazilians. In fact, the number of Brazilians apprehended dropped by 50 percent. After 60 days, the rate of Brazilian illegal immigration through this sector was down 90 percent, and it is still significantly depressed all across the border. In short, we learned that a concentrated effort of removal can actually discourage illegal entries by non-Mexicans on the Southwest Border."

I think my point in this problem-solving process is an achievable goal is something that we have already achieved at some point in time. The goal ought to be short term, immediately. How do we reduce that flow? The 240,000 individuals in less than 6 months, how can we reduce that number?

Listen, I am all for helping Central American countries develop providing opportunity, but that is years in the future. It is certainly going to be a bigger problem when you have the drug cartels operating with impunity, destroying those public institutions. That is a really heavy lift.

Michael Chertoff showed us there is a way for us to at least achieve this short-term goal of reducing that flow, and hopefully our witnesses will paint the picture that there is nothing humane about incentivizing people to take a very dangerous journey, reducing CBP, as I said last Friday, to a mere speed bump along the path to long-term residency in this country for unaccompanied children and people coming as family units. There is nothing humane about those people basically living in the shadows, potentially being exploited by employers. This is a problem. We have to recognize it as such, and we have to do something to fix it.

I do ask that my written statement be entered into the record.¹ Without objection, it will be.

With that, I will turn it over to Senator Peters.

OPENING STATEMENT OF SENATOR PETERS²

Senator PETERS. Thank you, Mr. Chairman, and thank you for holding this hearing today.

I appreciate the Chairman's focus on obtaining accurate, timely data on migration and border security. Certainly, few issues that we face today are as complex as this one or as controversial. Far too often, harmful rhetoric drowns out reasonable dialogue, and I hope that this hearing can cut through that rhetoric and let us focus on the facts.

¹The prepared statement of Senator Johnson appears in the Appendix on page 55.

²The prepared statement of Senator Peters appears in the Appendix on page 56.

The situation on our Southern Border, in Mexico, and throughout the Northern Triangle is dynamic. Our immigration system and our infrastructure should reflect that fact.

The reality is that much of our current infrastructure was built to address the challenges of the 1990s and early last decade when the majority of unauthorized border crossings were single men seeking economic opportunity.

That is not what the statistics show us today, and it is not what our staff saw during a bipartisan delegation to the Southern Border last month.

Overwhelmingly, they saw families from El Salvador, Guatemala, and Honduras.

They saw parents with children. They saw children who had made the journey to the border without their parents. They saw our hardworking law enforcement officers, public servants, volunteers, and civic leaders doing their best to manage what is certainly a very difficult situation.

Many of these families are fleeing violence and extortion. Homicide rates in the Northern Triangle are some of the highest in the world. Corruption and impunity prevail.

Only three out of every 100 homicides lead to trial and conviction.

This breakdown of the rule of law is a clear “push factor” that drives migrants to flee these countries.

Unfortunately, our system has not been able to keep pace with the increase in asylum claims.

Screening interviews are being delayed. The average wait to appear before an immigration court is now over 2 years, and the backlog is quickly approaching 1 million cases. This is simply unacceptable.

We need to do more to decrease processing times while increasing border security.

We absolutely need secure borders, but it will take cooperation and credibility, not chaos and confusion.

This Administration will need to cooperate with Mexico, Honduras, Guatemala, El Salvador, and international organizations to take on cartels and corruption. They will also need to cooperate with Congress and build credibility.

Unfortunately, this Administration has provided too much chaos and confusion and too little credibility. It has been one step forward and two steps back.

The Department of Justice (DOJ) approved a plan to reduce immigration court backlogs only to see backlogs grow as a result of an unnecessary government shutdown.

We passed a bipartisan deal to make meaningful investments in security for both our Northern and Southern Border, only to see the President unilaterally declare a national emergency to circumvent Congress and potentially pull away funds from important military construction projects.

In February, the Department of Homeland Security announced a Memorandum of Cooperation with the Northern Triangle nations to combat human trafficking and organized crime, only to see the President cutoff existing funding to these countries just 5 weeks later.

Chaos is not a strategy. We need bipartisan cooperation at home and effective American leadership projected abroad.

This is still possible. Just yesterday, I introduced bipartisan legislation with Senator Cornyn from Texas to address staffing shortages at our ports of entry across the Nation, both on the Northern Border and the Southern Border.

This is especially important now as DHS is potentially moving upwards of 2,000 Customs and Border Protection officers to the Southern Border.

I believe this legislation is an important first step we can take to reduce the strain on our Southern Border while improving the facilitation of trade, travel, and commerce across the United States. But there is clearly much more to do, and we will begin that journey today with your testimony. So we appreciate you being here, and I look forward to the discussion.

Chairman JOHNSON. Thank you, Senator Peters.

It is the tradition of this Committee to swear in witnesses, so if you will all stand and raise your right hand. Do you swear that the testimony you will give before this Committee today will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. MORGAN. I do.

Mr. DAVIDSON. I do.

Mr. SELEE. I do.

Chairman JOHNSON. Please be seated.

Let me first say that if the Committee Members have not read the full testimony of all the witnesses, I would really urge you to do so. It is excellent. As a result, what I have decided to do is give all three witnesses 7 minutes—we normally just give people 5—to summarize the excellent written testimony.

Our first witness will be Mark Morgan. Mr. Morgan is the former Chief of the U.S. Border Patrol (USBP). Prior to joining the Border Patrol, Mr. Morgan spent 20 years in the Federal Bureau of Investigation (FBI), including nearly 3 years as a Special Agent in Charge of the FBI's El Paso Division. Mr. Morgan.

TESTIMONY OF MARK MORGAN,¹ FORMER CHIEF, U.S. BORDER PATROL (2016-17), U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. MORGAN. Chairman Johnson, Ranking Member Peters, and Members of the Committee, it is a privilege to appear before you today.

I enthusiastically agreed to appear when I was asked because I truly believe that our country is at a crossroads. With more than 30 years of public service, I am extremely concerned about the growing risks to our Nation's safety, national security, and rule of law due to illegal and uncontrolled immigration. We are experiencing a crisis at the Southern Border at a magnitude never seen in modern times. It is unprecedented. In the words of the former DHS Secretary Jeh Johnson, "By anyone's definition, by any measure, right now we have a crisis at a border." I will say it is chaos.

¹The prepared statement of Mr. Morgan appears in the Appendix on page 58.

Make no mistake: Our personnel resources are overwhelmed. They are drowning. As each day passes, the threat to our country and the rule of law worsens. The loopholes in our asylum laws and nonsensical judicial precedent has driven what has devolved into essentially an open-border policy for a certain demographic. Central American families are incentivized and rewarded to come here illegally, enter our Southwest Border because they know DHS by law has to release them within 20 days into the interior of the United States where they are going to be allowed to remain indefinitely. It is simple. They know if they set one foot on American soil, say the magic words, they are allowed into the United States, and they know it.

Through social media, smugglers, and family members who have successfully exploited our laws and remain in the United States legally, they are well informed.

What should sound an additional alarm of concern is that most of these family members we are allowing in, we cannot properly vet. Let that soak in just for a second. We are letting in tens of thousands of people in this country every day who we know virtually nothing about. We must start being intellectually honest. Those coming, they are not all bad, but they are not all good.

What is happening is counterintuitive to the rule of law and defies basic principles of sovereignty. Here are a couple of false narratives quickly that I would like to address.

Only 15 percent of those coming in are found to have valid asylum claims, which really debunks the uniform outrage often used that immigrants are fleeing from extreme violence or persecution. In fact, recent statistics that I have seen have shown that the murder rate per capita has decline in the Northern Triangle countries. Baltimore, for example, has a higher murder rate per capita than Guatemala.

The fact is they are being pulled here for two reasons: economic equality and family reunification. Neither are valid claims under the asylum process. Nevertheless, we continue to facilitate an abuse of our laws and the generosity of this country. As a society, we cannot turn our backs and ignore the law, especially Congress. We cannot selectively enforce the laws based on political ideology or a personal sense of morality.

There is another false narrative which goes something like this: But the numbers of illegal immigrants are way down, so it cannot possibly be a crisis.

It is essential to look at the context behind those numbers to evaluate their true meaning. In the late 1990s and 2000s, there was 1.5 million apprehensions at the border, but as previously mentioned, the overwhelming majority were Mexican adults, of which we deported 90 percent of them, sometimes within hours of being apprehended. Additionally, one-third of those apprehended were recidivism, meaning the same person going back and forth. Those numbers are really about a million. But back then, everyone agreed it was a crisis.

Today 60 to 65 percent of those illegally crossing are family units and minors, and because of our broken laws and policies, those individuals are allowed into the country. Let us do the math: 1 million this year anticipated, that means we are going to release

650,000 individuals into this country that are going to remain here indefinitely.

This makes the current crisis, in my opinion, the worst we have ever experienced. In 2016, as Chief, I estimated 15 percent of the agents' resources were being diverted from the front lines to support humanitarian activities. I saw that as a crisis, and so did everyone else. Now Border Patrol is diverting 40 percent of their personnel away from the front lines to provide humanitarian-related functions. Meanwhile, the cartels are exploiting the resulting increased gaps because of our resources being diverted. Simply put, more drugs and criminal aliens are illegally entering the United States.

It is common sense. While the Border Patrol personnel are at their breaking point supporting the humanitarian crisis, the cartels are expanding the threat crisis while they are getting rich. It is a multi-billion-dollar industry for the cartels.

Here is something else that is not discussed. We know the unfathomable abuse suffered by those making a dangerous journey. That has been talked about a lot. But the victimization of this vulnerable category of people that are coming in does not stop when they complete their entry into the United States, nor does the criminal activity, those criminal aliens making their way into the country. Many of those seeking improved economic equality and family reunification continue to be preyed upon and victimized long after they have made their way into the United States.

I have seen firsthand the transition of countless youths into gang membership, and the reasons are varied but have remained consistent. The young immigrant population is increasingly susceptible and vulnerable to gang recruitment. That is a reality.

Additionally, the ability to interdict and seize illegal narcotics is being negatively impacted as well—another cause and effect of the unprecedented humanitarian crisis. Again, it is common sense. Shut down interior checkpoints, divert 40 percent of your resources away from enforcement action. We should not be surprised that smugglers are exploiting the wide open border.

As far the talking point that more drugs are seized at the POEs, simply false. Fifty percent of the border is wide open; 40 percent of your resources directed away from law enforcement; we have no idea what is coming in our Southwest Border.

How can we fix this? We need Congress to pass new legislation to fix outdated laws and gaps in the DHS authorities. We need to continue to work with Central American countries to improve economic opportunities. We need to continue to work with Mexico to eradicate the transnational organizations as well as drive them to be partners in addressing the humanitarian crisis.

We must continue to invest in border security, including additional infrastructure, technology, and personnel, where it makes sense, and we need increased support for appropriate interior enforcement.

We must also confront our broken legal framework if we are to achieve lasting and effective border security. We need legislative answers to the *Flores Settlement Agreement*, which really it stops the ability and impedes our ability to maintain custody of families and minors.

We must have the authority to detain asylum seekers while they are going through the immigration proceedings. We must also re-engineer our laws to ensure all minor children who are not victims of trafficking or persecution are returned home and reunited with their families, regardless of their country of origin. These two fixes that I just mentioned eliminate catch-and-release. Congress can do that.

The last fix that I want to talk about quickly—and I will wrap up here—a crisis requires swift, immediate, and bold action. It is chaotic. We have a crisis. I recommend a border-wide implementation of the Migrant Protection Protocols (MPP) which are being implemented currently in select locations whereby certain immigrants entering or seeking admission to the United States from Mexico—illegally or without proper documentation—may be returned to Mexico and wait outside of the United States for the duration of their immigration proceedings. Mexico has to get off the sidelines and be a proactive partner in this solution. Accompany this by port courts, which means we are pushing resources to the front lines to expedite all immigration proceedings.

In closing, I would like to talk about Drew. This is Drew Rosenburg, a young man who died needlessly because of our broken immigration system. For me, Drew's story, along with all the other angel families, serves as a reminder, and it should serve as a reminder for all of us. We have failed. Our collective failure has resulted in the pain, suffering, and irreparable harm of unfathomable numbers of people.

To be clear, this threat is not just to American citizens. The incentives of knowing you will be allowed into the United States outweighs any risk, harm, including death, for migrants. It has become an acceptable risk. Thirty-one thousand medical treatments are anticipated this year that Border Patrol will ensure immigrants receive. Last year alone, Border Patrol conducted 4,300 rescues of people trying to illegally enter this country because the incentives are so strong.

This has to stop. No more Drew Rosenburgs. No more American citizens should die from something that we can prevent. His death was preventable along with thousands of American citizens, as well as immigrants looking for a better opportunity and a better life. The way it is being done now has to stop. It is not right. It is not working. People are dying. American citizens are dying; illegal immigrants coming here illegally are dying. We have to fix this.

I thank you and I look forward to your questions.

Chairman JOHNSON. Thank you, Mr. Morgan.

Our next witness is John Davidson. Mr. Davidson is a senior correspondent for The Federalist and a senior fellow at the Texas Public Policy Foundation's Right on Immigration Initiative. Mr. Davidson.

**TESTIMONY OF JOHN DANIEL DAVIDSON,¹ SENIOR
CORRESPONDENT, THE FEDERALIST**

Mr. DAVIDSON. Chairman Johnson, Ranking Member Peters, Members of the Committee, thank you for inviting me here to testify today about some of what I have seen on the border. I just want to highlight three key points from my written testimony, which you all have.

The first is the scale of people coming across into Texas communities and cities this year compared to last year and the way that those communities are in crisis.

Second is what some of the migrants themselves say about why they are coming and what their situation is.

The third is the vast, complicated black market that is operating south of the border that is driving and facilitating all of this illegal immigration and moving families up to and across our Southern Border.

About this time last year, I visited a Catholic Charities respite center in McAllen, Texas, which at that time was receiving between 60 and 120 people a day, all of them families from Central America that had been discharged from Immigration and Customs Enforcement (ICE) custody. The way it worked is that ICE would drop them off at the Greyhound station in downtown McAllen, and the Greyhound employees would call the Catholic Charities respite center and say, "ICE just dropped off a bunch of people." The charity would send vans to pick them up and bring them into their respite center, which is sort of one-half of a rundown commercial building in downtown McAllen. They would give the kids something to eat, and they would help the adults find bus tickets and try to get them on a bus that same night to get them out because another group of people would be coming in the next afternoon, and there was not space for everybody to stay the night there. It was not a shelter. It was a respite center. It was not set up to be a shelter.

Today the Catholic Charities respite center in McAllen is receiving between 800 and 1,000 people a day. Last Sunday, they received 1,300 people—way beyond their capacity. They are in a new facility now, but it is a former nursing home. They are not set up to receive this volume of people.

McAllen is a city of about 150,000 people, and according to the mayor of the town and according to people that live there, they are now facing the prospect of thousands of migrants discharged from ICE custody wandering the streets and sleeping in doorways and on park benches. By any measure, the situation there is an emergency.

This is just one border town in Texas. Something similar is playing out all up and down the border and all throughout southern Texas.

I want to talk as well about some of the conversations and the time I have spent talking with migrants themselves. If you spend enough time down there and talk to enough people, a few common characteristics will stand out.

¹The prepared statement of Mr. Davidson appears in the Appendix on page 73.

The first is the majority of these family units are men traveling with one or more children—usually just one. Many of them will say they have a wife and other children back in their home countries, that they are coming here to find work and send money back home. They freely admit this. They are headed for all points across the United States and often have networks of family and relatives in those places. Many of them already have jobs lined up.

Nearly all of them will say that they left their homes because of gang violence, threats, extortion, etc., or that they simply have nothing and they are claiming asylum.

At the same time, many of them will admit that they do not plan to remain in the United States permanently and have a set amount of time that they plan to stay and live here and work before returning to their homes and their families—a year and a half, 3 years, 5 years. It varies. But a lot of them will say this.

They all say that they paid a smuggler to secure safe passage across the border, anywhere from \$2,000 to \$6,000 per person, on average, sometimes more. Generally, they take cars or buses transiting through Mexico. Some of them will stay in hotels along the way. A lot of the groups, especially those showing up in downtown El Paso, appear to be in pretty good shape, and they report that they got here with no problem and were only on the road for 3 to 5 days, generally.

Despite the challenges and dangers they face in their home countries, the vast majority of these people appear by all accounts to be not refugees but economic migrants, and very few of them appear to have what sound like valid asylum claims.

Part of what is driving this—and this is the third point I want to emphasize especially—is that what is happening here is not an accident. It is an industry. When we talk about the migration pipeline through Mexico, we are talking about a very large international smuggling black market that is worth billions of dollars. A complex network of smugglers, local officials, drivers, land-owners, lookouts, loan sharks in Central America, and Mexico drug cartels control the migration flow through Mexico and have, over the past decade or so, refined it into a lucrative business enterprise. The chief beneficiaries of this pipeline are Mexican drug cartels and the smuggling networks that work all throughout Mexico. Generally, the cartels require every man, woman, and child who passes across the border to pay a tax, which is usually included in the fee that the smugglers will quote to Central American families. Without paying this tax, migrants cannot cross the Rio Grande Valley (RGV) and in many cases are at risk of being kidnapped or otherwise exploited by these cartels in northern Mexico. The amount of money that they bring in is substantial. In the Gulf Region alone, cartel factions are making hundreds of millions of dollars annually off illegal immigration, off this tax that they charge per person. The numbers from last year were very high. The numbers from this year will be orders of magnitude higher.

This black market is sophisticated. The inception point is in villages and towns across Central America, and it works mostly, at the beginning through word of mouth. If you want to migrate, you get hold of somebody whose family member or neighbor migrated, and they put you in touch with a local smuggler who quotes you

a price. Adults who bring a child with them get a cheaper price because it is easier for smugglers to transport families claiming asylum than single adults who are trying to evade detection. This is for the simple reason that with asylum seekers, smugglers simply take them up to the U.S. border and tell them when to cross. They do not go across the border themselves, and, therefore, they are not putting themselves at risk for being apprehended.

Smugglers themselves are telling potential migrant families that if they claim asylum, they will be allowed to stay in the United States and work. They do not have deep knowledge of asylum policy, but they know enough to be able to sell the services that they are trying to get families to buy. They are incorporating this into their sales pitch, and they are instructing them in what to say to U.S. authorities. It is part of how they market their services.

I see my time is running out, so in conclusion, I will just reiterate what the Chairman said and the Ranking Member said. There is indeed a crisis at the border, and it is being driven by three major factors. For those claiming asylum, it is easier to enter the United States now than it was during the Obama Administration because there is no capacity at Federal detention facilities, and the families can expect to be released after being detained.

Smugglers are marketing to people who do not want to undertake an arduous or dangerous journey, like women and families with small children. The smugglers have created an efficient travel package that has proven popular in Central America, and word has gotten back to these Central American communities that, if they pay, the journey will be short, safe, and you will not be detained in the United States.

Third, the conditions in Central America have not improved enough to induce people to remain in their home countries. Poverty, violence, and corruption, combined with the fear that it is not going to be this easy to get into the United States forever, is prompting families to come now.

I will reiterate what Mr. Morgan said. Only legislative action can address this problem. The problem is not with CBP or with Border Patrol. Those are not the institutions that have failed here. Congress has failed by its inaction to address this crisis. As long as Central American families know they can gain entry to the United States by claiming asylum at the border, the crisis will continue. As long as cartels and criminal networks know they can profit by trafficking migrants across the border, they will do so. As long as conditions in Central America continue to fester, families who can afford it will seek a better life for their children by traveling north.

Thank you for the opportunity to speak today. I look forward to your questions.

Chairman JOHNSON. Thank you, Mr. Davidson.

Our final witness is Dr. Andrew Selee. Dr. Selee has served as the president of the Migration Policy Institute since August 2017. Previously, he spent 17 years at the Woodrow Wilson Center. Dr. Selee.

**TETIMONY OF ANDREW SELEE, PH.D.¹, PRESIDENT,
MIGRATION POLICY INSTITUTE**

Mr. SELEE. Thank you, Mr. Chairman, and thank you, Ranking Member Peters, thank you to all the Members of the Committee for the opportunity to testify today. I am, as you know, with the Migration Policy Institute, which is a nonpartisan, independent organization that tries to do fact-based research and look at pragmatic solutions for managing migration, both in the United States and around the world.

I just got back this morning from Phoenix, Arizona, and so let me start off by saying, Arizona is deeply linked to Sonora, Mexico. A lot of what goes on, when we talk about the border, we are talking about a specific part, but it is worth starting out by remembering that we actually have lots of legal commerce and lots of legal transit across the border. Indeed, most of what goes on between, Mexico and the United States is, in fact, legal flow back and forth, and it works quite well.

We did have a long period of Mexican unauthorized immigration into this country, and quite significant. Chief Morgan made reference to it earlier, quite significant. It started to slow down in 2008 and has slowed down considerably. It has continued to slow down despite the current peak we are seeing in unauthorized migration.

Mexicans have stopped coming, and hold that thought because I will come back to that in a minute. Mexicans come legally, by the way, to this country. Lots of Mexicans are still coming through legal channels, but we have seen an enormous drop in unauthorized migration from Mexico. An enormous drop.

We started to see in 2012 and in 2014, as you have seen on this chart² that the Chairman has given us, a spike in Central American unauthorized migration. 2014, let me offer one other explanation, which is the gang truce in El Salvador ended, and El Salvador had a huge spike in murders. In 2014, it became the most violent country in the world, either in 2014 or 2015, so there was both a push and a pull factor most likely. I think that is something we need to keep in mind. There are push and pull factors going on, as well as transit factors, as well as smugglers are an actor here, as you heard from John.

For a long time, we could continue to say that unauthorized migration was dropping at the border, that illegal migration was dropping at the border, because the Mexican numbers were going down so much that it obscured the fact that the Central American numbers had gone up. That has changed. In the past few months, we have seen what is clearly a significant number of people crossing the border. We are back to numbers we have not seen in a decade. And particularly this is a substantially different flow than we have seen before in its origins, characteristics, and drivers, and as a result, we need different policy solutions to address it. This flow is predominantly Central American, not Mexican. It is predominantly families and unaccompanied children, 61 percent this year, mostly families, 51 percent, 10 percent unaccompanied children,

¹The prepared statement of Dr. Selee appears in the Appendix on page 78.

²The chart referenced by Dr. Selee appears in the Appendix on page 86.

rather than adults traveling alone, and it is driven by a complex set of factors that include not only economic opportunity in the United States, but also the effects of chronic violence and poor governance in the countries of origin, and the incentives created by the ballooning backlog of U.S. immigration courts.

There are at least four things that changed in the past year that have created this spike. As with any wave, there is not one cause. There are multiple things that interacted with each other. But one of them is the smuggling patterns changed, and they changed largely because of the caravans. The caravans are not the reason for the spike in numbers. The caravans are a small percentage of people that cross. The caravans got the smugglers to respond. The caravans were an existential threat to the smugglers. They were taking their business away. It is a free way of crossing.

The smugglers innovated. They got creative about what they offer, about their prices, about their modes of smuggling, some of the things you just heard Mr. Davidson say. They got very creative about how they sell their messages. Smugglers matter in this.

Second, there was a lot of U.S. policy chaos. U.S. policy chaos created the perception and created the awareness that was then exploited by smugglers about where some of the ability was for families to stay in this country. That information was not generally available, and particularly the news cycle that drove this was family separation. Family separation, which was then abandoned, created a news cycle about the fact that families could not be held, and this information has been used effectively by smugglers to let people know, coupled with, as you heard, the notion that at some point the border was actually going to get shut down. It is going to become harder, but right now you can actually be let loose. This is the message people are getting.

Third, I think we do have to take seriously worsening conditions in Guatemala and Honduras, and this is primarily a crisis of Guatemalans and Hondurans coming to the United States. Salvadorans have dropped in the past 2 years. I will come back to that. Now, they have gone up a little bit this year, actually, with the overall surge, but they are still way below numbers of 2 years ago. This is primarily Guatemala and Honduras. Something is going on in those two countries, and it is tied in part to an ongoing drought, ongoing issues that have affected about 5 million people in those two countries. It did not start this year. It started about 4 years ago, almost 5 years ago, but it is something that has not gotten better, and it has continued to impoverish people.

You have seen a movement of some of the organized gangs from El Salvador into parts of Honduras and Guatemala where they were not there before, so homicide statistics are going down, but predatory violence is going down in some of these communities. You are seeing a worsening governance situation in both Guatemala and Honduras, unlike El Salvador. You are seeing actually in Guatemala and Honduras significant backsliding in democracy in the past year. The government is taking on international bodies that were sent there to help the attorney general's (AG) office take on corruption, and that is a big issue.

In terms of people's sense of "Is my country going to get better?" that matters.

There is one other possible explanation, which I would almost discard but not quite, which is that Mexico's new government sort of let everyone through. That does not seem to be true. Looking at the numbers, Mexican enforcement has more or less continued on autopilot, as it always did. The numbers look very similar this year, the last 3 months, 4 months of this new Administration versus a year before. However, there was clearly—in the same ways in the United States a bit of policy chaos, there has been a bit of policy chaos in Mexico about what their message is. They have started talking about creating legal pathways that they do not yet have. And so that may have also been part of the smugglers' message, which is it is easier to get through Mexico. It is not a drop in enforcement, but it is a change in messaging.

So in the same way there is no single factor leading to the rise in migration, there is no single way of fixing this. But let me throw out three options that would actually help us deal with this.

The first is to fix the asylum system. This is not a question of trying to get around *Flores* or get around the Trafficking Victims Protection Reauthorization Act (TVPRA). This is a question of an asylum system that cannot make decisions about who needs protection and who does not. This is something in our power to do. It is something in your power to do, and it is something in the Administration's power to do, is to make the asylum system make timely decisions. If we can make timely decisions, it would be both more fair to people who have real asylum claims—and I have talked to a lot of people who had pretty strong asylum claims, so out there I can tell you there is a bunch of people that do, and we should be giving them justice in real time and giving them protection in real time.

But it would also discourage people that do not have asylum claims, and there are a lot of people who are economic migrants, and they should actually be returned because asylum is not the pathway for people who are economic migrants. We can talk later about labor migration and how we do this, but we do not want the asylum system used for that.

There is a simple way of doing this, and nothing is simple—right?—but there is a way that is actually doable, which is instead of sending everything to the backlogged immigration courts, we have asylum officers make the first decision. DHS can actually have asylum officers make the first decision. This is what we do with refugees. We have a pattern—

Senator CARPER. In their native countries?

Mr. SELEE. No. In the United States, but at the border. Rather than sending—we can actually, have the asylum officers make that—it would require a rule change or legislation, but it is eminently doable. You could make decisions in months instead of years. OK? We do not actually need to hold children in detention centers either. We can actually make this—we can do case management. There are lots of ways we can do this that is both humane but also tough.

Second, we need to work with Mexico to strengthen their migration system. They have said, the new government has said that they want to strengthen their asylum system, give more people asylum. They have said they want to create labor migration. There

are parts of Mexico with real labor needs. We should help them do this. This is in our interest; it is in their interest. I do not know if it is going to happen quickly or effectively, and it is something in which we could be very helpful as a partner in doing. We have some experience in doing this as well. We could bring in the Canadians and others. But this is something we should take advantage of the moment. The more people stay in Mexico and the more they fill labor needs and they receive protection in Mexico, the less pressure on our border. It is time to take advantage of that.

Third, we should work with Mexico and Central America to tackle the smuggling networks. We can talk about that, and we should prioritize the predatory networks and the ones dealing in special interest immigrants.

Finally, we do need to invest in governance, public security, and youth employment in Central America. Mexico is the case that shows us that over time some things do make a difference. In Mexico's case, more Mexican investments, but it was also tying the economy to the United States where people stopped coming. The U.S. economy is really good, by the way. I forgot to mention that. The U.S. economy is really good. Mexicans are not coming. Guatemalans and Hondurans are coming because there is a push factor as well. Right? The pull factors and the push factors work together. Salvadorans are not coming in large numbers yet. I mean, we will see what the numbers look like down the road. It tells you that if you invest in the point of origin, it can make a difference over time. I agree with the Chairman, it is not a fail-safe that works tomorrow. But in a place like El Salvador where there seems to be a virtuous cycle going on, where you actually have demographics in your favor—it is an older population, more urbanized population where security seems to be getting better, the kind of investments we have made on the ground with local governments in El Salvador as far as that seem to be making a difference. You can actually tell in the 50 municipalities where we have worked predominantly the kind of investments in youth engagement, in community policing, as well as what we have done on national level to support the attorney general's office and go after corruption, these things make a difference. It is going to be harder to do in Guatemala and Honduras. I will not sell a bill of goods that we cannot come up with. It will be harder. But it is something clearly we need to do because that will be our long-term solution.

Just to conclude, because I know I am over time, let me say that there is no magic formula to stop migration flows. We need to think in terms of a range of policy strategies. We do need to accept that there are legitimate asylum seekers out there. I can tell you stories of—I spend a lot of time in women's shelters and in youth shelters in Mexico. I can tell you, any number of stories of a woman whose 3-year-old had a gun put to his head and was told if they did not make their next payment to the extortionist, to the local gang, they would kill her son. The next time they could not make the payment, they left.

I can tell you about a young woman I met who left because the gang leader in her neighborhood wanted her to be his woman, whatever that means, and she decided to flee. As she fled through Mexico, she got a call in every city. Every shelter she landed in,

someone from the gang called her to let her know that he was following her, up until she got to Tijuana and finally was able to disappear.

I can tell you about a young man who was told he had to join the gang or they were coming for his mother, and he never went home again. He had his brother go get his stuff and never went home and has not seen his family since.

That said, that is not everyone. We are a country that cares about protection. We are country that cares about refugees. We need to have an asylum system that works. At the same time, that asylum system should be timely enough that people who are using it for other means than protection should actually not make the cut and should be returned in a timely way as well. We need to work with our partners in Mexico and Central America. We should not be threatening them. We should be working with them. We should be looking at the root causes of migration because in the end that is the one thing that is going to make a difference in the long term.

I would put out again the example of Mexico. This was once—15 years ago, it would be impossible to think that people would stop migrating from Mexico. I mean, even 10 years ago I did not believe—5 years ago, I was not sure I believed this was not going to start up again. I actually believe it now. El Salvador, I think we may be at the beginning, cautiously, but I think we may be at the beginning. Guatemala and Honduras, we have to imagine that we have to get them to a place where people do not want to leave, with both the incentives on our side to leave, because I think there are incentives in our policies, do not bring people, but also the causes on the ground do not lead people to go. The smugglers, also, we have actually dealt with in such a way that they are less of a threat and less pernicious in their ability to convince people to move when they should not.

Thanks.

Chairman JOHNSON. Thank you, Dr. Selee.

I am going to defer my questioning, but I want to make a couple points.

First of all, we will definitely stipulate there are all kinds of deportations; there are all kinds of people that are fleeing unbelievable types of threats. But I do look at what is probably our best information right now. About 15 percent of people seeking asylum actually have those asylum claims granted. So that would indicate to me about 15 percent of the people coming in here are subject to those types of threats, which, of course, we all want to grant asylum for those. But 85 percent are probably more in the category of economic migrants. Now, those are not perfect stats, but it gives us some kind of indication.

The other thing is, again, separate out achievable goals short term versus long term. Right now, what I want this Committee to work on is the short-term goal, which I would say is what we need to concentrate on: reducing this flow of illegal immigration. I am happy to talk about the long-term goal, but recognize it is a long-term goal. We are not going to improve the economies significantly to reduce this by development dollars in Central America. Again, I just kind of want that to inform our discussions and questions as we move forward.

But, with that, I will turn it over to Senator Peters.

Senator PETERS. Thank you, Mr. Chairman. Thank you to the three of you for your testimony. You certainly gave us an awful lot that we will now try to unpack through a series of questions over the remaining time that we have in this hearing.

First, I want to deal with a short-term issue that you mentioned, Chairman. According to the CBP's own workload staffing model, the Office of Field Operations is understaffed by nearly 4,000 CBP officers right now. Certainly we must address the challenge of the Southern Border, which was laid out quite extensively by the three of you gentlemen. But these efforts should not create a large-scale disruption in the legitimate trade and travel that is occurring across these borders, and I remind everybody we have a Northern Border as well as a Southern Border, and these trade relationships are critical to the economic viability of our country.

Yesterday I introduced legislation with Senator Cornyn that would fully staff our ports of entry, airports, seaports, and land ports of entry. Dr. Selee, I appreciated that in your December testimony before the Judiciary Committee you specifically recommended investments in technology, customs officials, asylum officers, and things that you have echoed here today.

But could you discuss the potential negative impacts to our economy of moving hundreds or even thousands of CBP officers from our ports of entry to the Border Patrol sectors? What will that potentially do?

Mr. SELEE. I think it is hard to underestimate how much the U.S. industrial base, our production chains, are, in fact, North American. They are not American anymore. I mean, the auto industry relies on an integrated platform that is, Canada, the United States, and Mexico. So I have, somewhat too poetically, called it a "murder-suicide" to close down the border. We can do it, but it actually comes back and boomerangs on us as well. This is the kind of thing where we are deeply economically interdependent. It is true in refrigerators; it is true in cars; it is true in—run down the U.S. industrial production. It is starting to be true in technology, some areas of technology, but slightly less true. We are deeply integrated. So even slowdowns have a huge impact on just-in-time manufacturing, right? It has a huge impact on American workers, right? We can sustain it for a week or two. We can sustain it—American industry will survive for a short amount of time. If we continue to disrupt commerce across the border, that will be an issue for American workers, and Mexican and Canadian workers, for the long term. It will have a huge impact on gross domestic product (GDP) growth.

This is an area where I think we should not underestimate how interdependent we have become. Actually, the Governor of Arizona, talks about this quite eloquently. This really is a—Sonora and Arizona are one tied-together entity, economic entity. If you go to San Diego and Tijuana, Mayor Faulconer of San Diego talks about Tijuana and San Diego now being one metro area rather than two cities because they are economically integrated in a way that was not true 10 or 20 years ago.

Senator PETERS. Dr. Selee, you mentioned the impact on manufacturing. Certainly we see that firsthand in Michigan with the de-

pendence of the auto industry, as you mentioned, of both Mexico and Canada and the just-in-time delivery that we see across the Canadian border in particular that, if disrupted, creates a cascade of bad impacts that ultimately impact American workers and impact our country, but agriculture as well. If the agricultural inspections that we are taking CBP officers away and sending them to the Southern Border, that could have a devastating impact on agriculture, too, couldn't it?

Mr. SELEE. A huge agricultural market for the United States, Mexico is one of our biggest markets for any number of agricultural products, from soybeans to, wheat, corn, pork, and beef. Actually, Mexico is one of the top, one, two, or three on all of those. Yes, it is a huge market disruption, and, obviously, is a source for strawberries and fresh fruits and other things we consume as well. So huge impact.

Senator PETERS. But having those officers in ports of entry around the country, because we have imports coming in from around the world—

Mr. SELEE. We do.

Senator PETERS [continuing]. If not screened properly, can have a devastating impact on our agricultural industry.

Mr. SELEE. Yes, very much so. We can miss this in the talk about the tough things going on at the border, but I think one of the things that we have actually achieved, to the credit of CBP, actually, over the past few years and their counterparts in Canada and Mexico, is we increasingly manage the border at both the north and the south very collaboratively and with a lot of minding the flows rather than just the line, how we prescreen things before they get to the border. It has become much more secure and much more efficient at the border than it has ever been before.

Senator PETERS. In 2016, to Senator Johnson, you included a measure in the National Defense Authorization Act (NDAA) to establish some baseline metrics for the DHS to measure security along the borders, and I want to compliment you on that. I think that is an important effort to understanding what exactly we are dealing with, and data is critical. We want to make this fact-based and data-driven as to what we do going forward.

I would like to ask the panel, is there additional data that CBP should be collecting in your estimation so that we can get a real true sense of what is happening here? I will start with you, Mr. Morgan.

Mr. MORGAN. I think if you look at the data right now, they are doing a pretty good job—I mean, the data is not perfect, and I do agree there is some improvement in some areas. I think we saw in the past that, when you have taken action like separation of families, we should do a better job of that data, and I think we can all agree on that.

But if you look at what they are collecting, it clearly paints a picture from 2014 to now. It clearly shows the demographic changes from Mexican adults to Central American and Northern Triangle countries. It clearly shows that in 2012—really in 2014, how it was mainly unaccompanied minors, but now it has shifted to family members. I mean, those are the key essential elements of data that

they are collecting that really illustrates the critical crisis that we are in now.

Specifically, are there overall improvements? But I think they are doing a pretty good job right now.

Senator PETERS. Mr. Davidson, specifically, is there anything additional—not what we are doing right now, I appreciate that comment, but anything additional? I will go to you afterwards, Dr. Selee.

Mr. DAVIDSON. To my mind, the one area when it comes to data that we do not have any and we may never have any is data about the smuggling networks and the cartels and the kind of money that they are making off of this. We can do back-of-the-envelope approximations. An \$800 tax per person to the gulf cartels for everyone that crosses, that is hundreds of millions of dollars on that part of the border. But the amount of money, I think, is substantial, and I do not think that we quite have gotten our minds around that yet, how big the industry is.

That does not really answer your question, but—

Senator PETERS. Thank you. Dr. Selee?

Mr. SELEE. Yes, I would agree. Actually, information on smuggling networks and the fact that you have to really compile that across agencies and across countries, which is complicated.

I would say also making sure that the numbers that DHS has are public in a timely way. I will actually throw out—just since we have mentioned a couple times here the asylum numbers, the latest asylum numbers we have are, by the way, 15 percent approval rate for Guatemalans, but it goes up to about 21 or 22 percent for Hondurans, 25 percent for Salvadorans. It actually goes up a lot depending—El Salvador has been much more of a violence-driven flow. Guatemala has been a more economic flow. Honduras is in between. But I mention that because those are old numbers. OK? We do not actually have updated numbers. A lot of the numbers that we deal with on the outside—but I suspect a number that people on the inside are dealing with also have a giant lag in them, and so investing in up-to-date—especially when we are dealing with things that change in 2 months, right? This would have been a different conversation 3 months ago than it is right now. We have to have real-time numbers that can be socialized across agencies to Congress and to the wider world.

Senator PETERS. Thank you.

Chairman JOHNSON. Thank you, Senator Peters.

As the accountant on the Committee, it drives me nuts that we do not have the kind of data that we really do need. But I agree with Chief Morgan that we have done a pretty good job. We kind of have this assessed. But I would like to know exactly what it is in terms of percent of asylum claims right now that are valid. That gives us information. Talking to the Secretary last week, her sense was it is shifting more and more to an economic migrant flow. But, again, you just do not have the data on it. Senator Hassan.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you very much, Mr. Chair and Ranking Member Peters, for this hearing. Thank you to our witnesses today. I also wanted to thank the Ranking Member for his opening comments and associate myself with them. Thank you for that.

Dr. Selee, we have heard from all three of you today about the impact of drug cartels at our Southern Border. Last year, I was at the border myself, and one of the things that I heard from agents on the front lines was the need to stem the flow of illegal firearms and cash southbound from the United States to Mexico, because that is, of course, feeding the cartels. Firearms and cash make their way into the hands of these cartels, empowering and driving them to commit more acts of violence on both sides of the border.

Dr. Selee, in your opinion, what needs to be done to improve our capacity to conduct southbound inspections at the U.S.-Mexico border?

Mr. SELEE. That is a tough one because you do not want to gum up the system going south.

Senator HASSAN. Right.

Mr. SELEE. At the same time, it really is a problem. We have a circular business here, right? The cartels are moving narcotics northward across the border, but then the money that is spent by American consumers of illegal narcotics is then going back into Mexico, and some of it is used to purchase arms and head back. We have a real circular trade going on here.

Senator HASSAN. Yes.

Mr. SELEE. Probably the best way of dealing with this is not actually stopping people at the line, but it is looking at the flows. It is what CBP is becoming increasingly adept at doing, what the FBI does very well as well, which is increasingly it is how do you follow the networks of people that are involved in arms trafficking? How do you the kind of investigations that allow you to figure out who are the people that are moving the money? First of all, the financial side, who is moving the money? Some of it still moves in cash, which is hard to believe, this quantity of money. Some of it moves through the financial system, some of it moves in cash, though. Because those networks are there, right? People who are going north are going south again.

So it is actually more in the investigation side. That is a coordination issue among agencies, and it is a coordination issue with Mexico as well.

Senator HASSAN. And that assumes that, of course, if we can have good investigations that follow the money and follow the firearms, we will be able to disrupt the cartels, right?

Mr. SELEE. That is right. The most we can hope for is disrupting, to be honest with you. I mean, I do not think we are going to stop the business by, stopping all the money, but disrupting it enough that you create chaos. A little bit of chaos and disruption and a big of degrading of their financial logistical networks goes a long way.

Senator HASSAN. Right, and working, obviously, with governments south of the border, too.

Mr. SELEE. Very much so. We did this right after—during the Calderon administration in Mexico, both with the Bush Administration and the beginning of the Obama Administration, we were

very active, actually, on the financial side. We have moved a little bit away from it.

Senator HASSAN. OK. That is helpful.

We have also heard from other witnesses here today and many of us up on the dais about the migration that is happening despite the President and the Administration's actions. If I understand your testimony correctly, you indicate that actually the opposite is true. In your view, are the actions and policy decisions of this Administration contributing to the spike in migration and border crossing at the Southern Border right now?

Mr. SELEE. I think the answer is yes, although it would not be the first Administration that has done that.

Senator HASSAN. Right. Understood.

Mr. SELEE. Being fully balanced on this. My sense is that we have tried repeatedly to overreach and fix specific things. We have actually been trying to limit people's access to asylum, trying to separate families, we need to be actually fixing our asylum system. There is one big thing we could do that would actually make this easier. We keep doing sort of overreaches. It was family separation, but then it was a DHS order to not take asylum applications between ports of entry. That was stopped in the courts. There have been a couple others along the way. It is metering, frankly, also I think is another piece of this, where it becomes very hard for people who have legitimate claims to present those at the ports of entry, and so the message from the smugglers is, "Hey, come with me between ports of entry." People who might actually have wanted to do the right thing are not doing it.

We need to figure out, rather than trying to fix a lot of small things, just do one big fix that actually makes sense here.

Senator HASSAN. Right. It seemed to me from your testimony that in some ways we are playing—it is whack-a-mole, right? I mean, we go after one problem; we create a ripple effect or a side effect; then we have to go after that, when, in fact, we have some systemic changes we need to do, including a lot more judges, a lot more personnel at the border, something I heard about when I was at the border, smart infrastructure, smart deterrence and technology at the border.

Thank you very much, and I yield my time.

Chairman JOHNSON. Senator Portman.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Mr. Chairman. We appreciate all of you being here.

Chief, I was doing a ride-along with the El Paso Sector, probably 40 years ago, which dates me, and you indicated that things have changed dramatically. At that time, it was primarily men coming over from Mexico looking for work, and the numbers were about a million, but I actually was working with some of those men at that time, and some of them were apprehended by the Border Patrol, and they were back that night because they were sent back to Mexico and they simply crossed again. There was not the families, there were not the kids, so it is a very different concern.

On data, I could not agree with you all more. We want the data. We want it in a timely fashion. We really do not have good num-

bers. We do know that the vast majority, whether it is 15 or 20 percent, of asylum claims are turned down. I guess we know that generally speaking.

We also know that of those, 10 percent, roughly, we are told by the Secretary of DHS, who are now being sent back to Mexico to await a hearing, which is a pilot program, in effect, that there seems to be some indication that those individuals are not staying in Mexico waiting for their hearing but going back to their home country, which is primarily Northern Triangle countries.

Does anybody have any data on that, any information on that? Dr. Selee, you may know about that program. Chief or Mr. Davidson, any thoughts on what those numbers are?

Mr. MORGAN. I do not.

Senator PORTMAN. Dr. Selee, do you know?

Mr. SELEE. I can try and get that to the extent the Mexican authorities may know something, but I have not seen that. My sense from journalists that are following this—there is a set of journalists that have been following this. Most people seem to be staying and waiting to see how their case plays out. But I would not doubt you get a few people headed back. It is still too new. We are talking about 300 people, more or less, the last number I saw earlier this week, so it is a small number.

Senator PORTMAN. I do not think it is the solution to the entire problem because I think you have to deal with the broader issue, including, in my view dealing with the TVPRA issue and the *Flores* decision, and, just coming up with a new approach generally to immigration. But I think it is an interesting short-term effort to try to encourage people to stay in Mexico rather than coming over here and awaiting their hearing.

What percentage of people who are released to the community actually show up at the hearing? Do we have that number?

Mr. MORGAN. We have a general number, so what they say, the numbers that I understand—again, the numbers are not perfect, but about 40 percent do not show up. They end up getting orders of deportation in absentia, and then the remaining do show up. Of course, the majority of those, the claim is found to be unsubstantiated.

Senator PORTMAN. Do you agree with that, Dr. Selee?

Mr. SELEE. Yes, that is about right. It depends on what group you are talking about. For families, it is fairly high. People tend to show up—there are two places that people can disappear, right? One is they get through—they are released. They are either given a notice to appear, and they do not show up or they do show up. They go through credible fear, and then they have to apply for asylum. A lot of the disappearance comes at that point. People do not apply for asylum—or they do not show up for their NTA hearing.

Once people apply for asylum, the numbers are pretty good about people carrying through their case, and people that have lawyers actually overwhelmingly carry through their case. But I would say the numbers I have seen are probably there, 40 percent probably do not, 60 percent do.

Senator PORTMAN. I think most people who we represent would be surprised by those numbers, and I think there is a broken system here, and we just added a lot more judges, as you know, in this

latest appropriations bill, and we also added some other things to border security, including more inspections at the border for drugs. In Ohio, we are getting slammed by drugs coming across that border. Most of the fentanyl, by the way, comes through the mail from China, but some of it is coming from Mexico now and in higher numbers. That number has increased. But crystal meth, which is our new problem in Ohio, is primarily, maybe exclusively even, being made in Mexico and coming across. Of course, heroin has been coming across, about 90 percent through the border.

This inspection technology I hope will work better, and, Chief, I do not know if you had much exposure to that at the ports of entry, but do you feel as though this new technology is going to make a big difference in terms of being able to stop some of the flow of drugs?

Mr. MORGAN. Absolutely. Unequivocally, we need more technology. We need more technology at the ports. We need more technology in between the ports, absolutely. But make no mistake. One of the false narratives out there is that more drugs are interdicted at the ports. First of all, just on its facts, that is incorrect. If you take into account, cocaine, heroin, fentanyl, and methamphetamines, yes, at the ports. But if you take into consideration all drugs, pound for pound, more is actually interdicted in between the ports.

What is another element that is critically important in that false narrative is 50 percent of the border is wide open, and now that 40 percent of the Border Patrol resources are diverted to do the humanitarian mission, the border is even more unsecure. The real thing we should be focusing on and talking about is we have no idea, sir, what is coming through our border because it is unsecure. We have no idea.

Senator PORTMAN. Again, going to data, hard to get to good data when we do not have the ability to collect the data.

Let me ask you another question. One of the things we focus on a lot is, the push factors, and I agree that the Northern Triangle countries deserve to have more assistance from us that is effective. We have tried different things. We tried the Millennium Challenge approach, particularly in Honduras, which I had great hope for. Frankly, it did not work out as I had hoped. I was on that board at one point when I was U.S. Trade Representative and was very supportive of trying to help change some of the institutions in those countries to create more rule of law and create the basis for economic development. I am not sure we know how to do that, but we should do more of that.

On the pull factors, one of the things that I think is lost sometimes is that these people are primarily coming here to work. It is a magnet. The families and the kids, people might say, "Well, that is for another reason." Not really because those adults are coming here to find a job. As was indicated earlier, many have a job already lined up.

What do you all think of making E-Verify mandatory and actually dealing with the magnet, the draw, which is a job ultimately? Right now I think people would be surprised to learn that with regard to E-Verify, which is an attempt to authorize somebody to be able to work, to say whether they are here legally or not, we do

not have an effective system. We do not have an effective system when someone shows up with a false ID, fake Social Security card, fake driver's license, employer is off the hook, and it is not mandatory.

Can you all talk about that as a pull factor and whether we should do more on E-Verify?

Mr. MORGAN. Yes, sir. So the answer to that is yes, absolutely. Just like we should continue to work with the Mexican Government, just like we should continue to work with the Northern Triangle countries, just like we need more technology, just like we need increased barrier. All that is true, and we need to get better at that. But make no mistake. We can do all of that we are talking about, sir, all of that, and nothing is going to change. The numbers are going to keep coming because of challenges like the *Flores* Settlement and TVPRA. If those two elements are not addressed, which is going to take congressional action, if they are not fixed, the incentives are there. That is the pull factor. The pull factor is *Flores* and TVPRA.

We could do E-Verify. Yes, we need it. We can get more technology. Yes, we need it. Physical barrier, yes. Continue to work with Mexico, yes. Northern Triangle countries, yes. Those numbers are not going to change, and the chart shows it. We have been working with Mexico.

With all due respect, Mexico, the reason why adult Mexican and the illegal entry of Mexicans went down was because we, America, we applied consequences. We removed them. Now, you can say that work with Mexico helped a little bit, but make no mistake. Those numbers went down because we removed them and we applied consequences.

So all this other stuff, while it is important, it is not going to eliminate the Central American families and minors from coming until we fix *Flores*, until we fix TVPRA. That will remove the incentive. That will eliminate catch-and-release. I promise you you will see those numbers go down dramatically.

Senator PORTMAN. My time has expired. Again, I appreciate all three of you and your service. I would say that even for these families coming up from Central America, I believe the primary pull factor is a job, is our economy, so I do think there is a way for us to address that through legislation.

Thank you.

Chairman JOHNSON. So just real quick, one piece of data we do collect is if we detain an individual versus if we do not detain them, on final order of removal, if they are detained, we remove about 77 percent. If we do not detain, we only remove about 7 percent. So that kind of gives you the idea, that is one stat we actually do keep track of.

I would also say in terms of Mexico, a lot of it is the Mexican economy has really revved up. I think North American Free Trade Agreement (NAFTA) worked, and as a result, Mexico needs more workers, and if anything, we might even had an outflow of that.

The next questioner is Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Mr. Chairman. Our thanks to each of you.

This is a little bit like Groundhog Day. I have been sitting here for 18 years, and we have talked about this issue a whole lot. I have said to my colleagues more times than they want to remember that there is no silver bullet here. There are a lot of silver BBs. Some of them are bigger than others. We are hearing about *Flores* revisited. We are hearing about TVPRA.

I had the privilege of leading a congressional delegation with Jeff Merkley and some of our House colleagues about a month ago, and we were in Honduras, Guatemala, and El Salvador. We do not have an ambassador in Honduras. We have not had one all year, did not have one last year, did not have one the year before. That is crazy. That is crazy in this situation. We could do something about that if we get a nominee. There was a nominee 2 years ago, and he was held up and never allowed to go through—not by us, not by our side, but by the other side.

I want to just mention a couple things about my trip to the Northern Triangle. You mentioned, Dr. Selee, that something interesting is going on in El Salvador, and you are right. Fifty cities there, 50 town cities, have been targeted for crime reduction successfully. We are complicit in those actions, which is a good thing. For every \$1 we put up through the Alliance for Prosperity in El Salvador, they spend \$7. It is like Home Depot: “You can do it. We can help.”

We have also just had an election several months ago. The current leader of El Salvador is a 75-year-old guerrilla leader with close ties to the Cubans, the Venezuelans, the Chinese. He has been succeeded by a 37-year-old mayor of San Salvador who gets economic development, understands the role of government in creating a nurturing environment for job creation and job preservation, understands why crime and corruption are important elements in creating that nurturing environment. He is the first candidate in El Salvadoran history to win an outright election as President of his country.

Guatemala is going to have an election in June, and some of the folks who helped put together the winning campaign in El Salvador are helping to run their campaign of former Guatemalan Attorney General Thelma Aldana. She is going to be a change agent. If she is elected, she will be a change agent in terms of crime and corruption.

There is something for us to learn from that election in El Salvador, and the fact is that illegal immigration is not dropping in El Salvador but it is not skyrocketing, and I think it is in part because people who live there sense a renewed sense of hope and opportunity.

We have talked a bit about what can Congress do, revisit the *Flores* decision. It has been mentioned here that part of the problem, a big problem, we have 157 million people who went to work today in this country—157 million. There are about 3 or 4 million jobs that nobody showed up to do. Americans do not want to do that work, cannot do that work, are not educated to do that work. There are folks who want to come to this country who can and are

willing to do that work, and they will try real hard to get here to have these opportunities.

We passed by a two-thirds margin immigration reform. How many years ago was it—6, 7, or 8 years ago? Part of that was a guest visitor worker program, which I think makes a lot of sense in the world. I have talked to so many people in these three countries of the Northern Triangle who say, “We do not want to come and live in America and stay here. We would actually like to be able to come here and work some and go home and eventually live full-time in our country.” We hear that again and again. That would work for us, and I think it would work for them.

I interrupted one of your questioning, I think you mentioned asylum, the ability to have access to asylum pleas almost upon entering this country. Secretary Nielsen has been pushing the idea of asylum hearings literally in our consulates within Honduras, Guatemala, and El Salvador, which I think makes some sense. Let me just ask, just go down the line—Dr. Selee, you can take it first—does that make any sense?

Mr. SELEE. Thank you, Senator. I think it does make sense. I think we would have to figure out how we structure it. The devil is in the details a bit, but it is a good idea to think of in-country processing. We have to have a way of protecting people if they are making an asylum application in their own country.

We had a pilot program, a very small pilot program in the Obama Administration, the Central American Minors (CAM), where we did this with minors. We can learn from that experience and build on it. We did have a way of getting people to Costa Rica to be protected while their asylum application was pending. It was actually not asylum. It was done through a different figure. But it was nonetheless the same idea.

We could also be talking with the Mexican Government about doing asylum processing in southern Mexico. I am not sure whether that would fly or not. It is not clear to me that it would work, but it is also something we could be having a productive conversation, people get into Mexico, have a safe zone under international auspices where people can apply for asylum, perhaps in both countries.

Senator CARPER. Thank you.

Mr. Davidson, just very briefly, please.

Mr. DAVIDSON. Yes, I would say to the point earlier about the remain in Mexico pilot program that they are trotting out, there is not a lot of information about it, about the numbers. It is not high, a couple hundred, maybe 300 or so. But the initial reports from that that I have seen is that it is very chaotic and very difficult for people who are remaining in Mexico to even know when their court date is here in the United States and to get here in time for the court date to communicate with attorneys. The idea that we are going to go through like full asylum hearings for all these people that are showing up I think is a losing proposition. Having expedited evaluation of asylum claims at the border or shortly after people come across, empowering CBP or somebody else, Federal agents, along the border to be able to do that in a timely fashion and not have this deal where they are going to have to go through the court system and the backlogs and having them come back and

forth across the border multiple times to pursue their asylum claims, I do not see how that is workable. So far it has been very chaotic, and it has been a mess.

Senator CARPER. Very briefly, Mr. Morgan, please. Same question.

Mr. MORGAN. I absolutely think it is a good idea, but both in their country of origin and Mexico, I agree there is some chaos. But whenever you are trying something new, there is always some chaos. I think the devil will be in the details. I think we could work that out.

But what I see from a law enforcement perspective, being in charge of this issue on the border, what it does is it takes away one of the important elements, the incentive to come here. Again, we have to keep going back to the incentive. If they set one foot on the soil, if they know they are not going to automatically just be allowed in and stay here indefinitely, that is going to reduce the flow. It is a good idea.

Senator CARPER. Alright. Thanks.

Chairman JOHNSON. Thank you, Senator Carper.

While we are on the subject, let me quickly ask, because we talk about asylum in the country. That is really asking for refugee status, correct? Asylum can only be applied for when you are in the country. Or do we have to change that law? Also, isn't there a distinction, too, that you really ought to be claiming asylum in the first safe country? We are kind of the second safe country, which would give us some latitude to change how we deal with asylum with people from Central America that are coming through Mexico?

Mr. MORGAN. Yes, Chairman, that is—Mexico should be a safe third country. Technically, the way the international asylum laws are supposed to function is you should be claiming asylum in the first country, the first border you come to. You have left your country. That persecution or whatever you are facing is now done. You are in that safe third country. That should also be addressed. Mexico has to get involved in that.

Chairman JOHNSON. OK, but that is something this Committee is going to have to explore. Exactly what are these treaties? What are these laws? To Dr. Selee's point, what can we do to expedite those initial determinations and people that simply do not have the valid asylum claim where, again, a larger percentage of these are really coming as economic migrants, which we fully understand but it does not qualify and those people need to be returned as a consequence. Senator Rosen.

OPENING STATEMENT OF SENATOR ROSEN

Senator ROSEN. Thank you so much, Mr. Chairman. Thank you for your testimony here today.

I want to hear your thoughts on the impact of aid cuts or potential aid cuts to the Northern Triangle and some of our South American countries. It has been stated here, of course, it is a significant number of migrants arriving at the border. They are children, they are young adults, many of whom claim a fear of persecution or harm from gang activity, other criminal groups.

Last year, I visited the tent city in Tornillo and heard the stories of some of these young adults, just like you have, who fled their home for safety in the United States.

So over the last several years, the United States has provided millions of dollars in foreign aid to support community-based crime and violence programs which aim to provide services to youth who are at particular risk, can be victims or recruited, and also to protect women from domestic violence and other types of sexual violence.

And so we have done other things and addressed migration, programs like nutrition assistance, training police officers. The International Justice Mission has been working with local authorities in Guatemala to increase the prosecution of child sexual assault with support from a State Department grant.

So my question for you, Dr. Selee, is this: How do you feel cutting aid to these programs and other programs like this will impact the situation on the ground, including violence and impunity, and that motivate people to come to the United States?

Mr. SELEE. I think it is important to note that most of this aid—I mean, very little, if any aid actually goes to governments themselves. This goes primarily to Non-governmental organizations (NGOs), and some aid is actually within the U.S. Government, obviously, itself. So the kind of things that we have seen work on the ground—and, again, everything, when we say work, Senator, everything is sort of—you have to take it with a bit of a grain of salt because everything is a moving target. But the things that seem to work, engaging—particularly in El Salvador, has been engaging young people in activities, both youth employment but also recreational activities, building community policing, for example; investing in agricultural areas in Guatemala and Honduras seems to have had some payoff. Then there is a lot of support for the kinds of prosecutions that you mentioned, and in El Salvador, we have done a lot of work actually with the attorney general's office on prosecution of corruption as well, on technical know-how to be able to prosecute corruption.

So my fear is with aid cuts is you see a backsliding. The governments will not be affected in this sense, but communities will be affected, and people who are struggling to make their governments less corrupt will be affected. The institutions and the organizations that have been pushing for better governance are the ones that are affected.

Senator ROSEN. If we do this, to follow up, and we remove some of our influence in the region, do you think other international actors like China are going to come in and fill this void, making us less safe and possibly increasing reasons for people to come?

Mr. SELEE. Senator, certainly in El Salvador the Chinese have been pushing in very aggressively to try and do a major development project and to become sort of the substitute for the United States. I think the incoming government is more skeptical about that, but I think that is—obviously, if we withdraw our influence, the other actors will want to be present. We have seen this elsewhere in the hemisphere, right? Both China and Russia have been present in different countries where the United States is less active.

Senator ROSEN. So you would agree that increasing support, trying to find good ways to support and, of course, measure how that may have an impact, gathering the data after would be a good investment for the United States?

Mr. SELEE. It would be a good investment, and I think one of the things that has been missing that we should do is actually gather data on what works.

Senator ROSEN. Right.

Mr. SELEE. Both tangible and intangible. I mean, it is both the programs that work but also what made it work. I think one of the things that seems to have worked in El Salvador is that you had buy-in from both main parties as well as civil society and business groups at a real local level to make things happen, and we really worked on that governance side. It is harder to do that in Honduras and Guatemala. They are less sort of developed. But those kind of intangible things that make a program stick are as important as the tangible things about whether the program reaches the right young people. You have to measure both of those.

Senator ROSEN. Do you think we could import programs from other countries around the world that we may have had success in supporting them and import those best practices to the Northern Triangle?

Mr. SELEE. I think we can do that, but I think we also need to make sure we adapt it to the conditions on the ground. But certainly we have a lot of know-how, and it is not just us in some of these countries. We are also working with the European Union, working with Canada. There are other governments. We tend to be the catalyst, and I do not think we should forget that. I think the U.S., part of our role in the world is not doing everything ourselves, but we are the catalyst to get other people involved.

Senator ROSEN. Right, and just trying to stop it at the core.

Mr. SELEE. Yes, exactly. I think if we see that leadership, others are going to also wonder—who have been trying to help out are also going to wonder. But I think bringing in that global knowledge, we could do a lot on the ground.

Senator ROSEN. The last thing I want to say is, of course, there are always bad actors. We know about the smugglers. You have talked a lot about them. What do you think we could do more to disrupt the smuggling networks?

Mr. MORGAN. I could take that. I did 20 years in the FBI, and so we have talked a little bit about that, and I think that is a great question, because we can address all these pull factors and incentives, but we have to attack the cartels. What I have been trying to say is we need to attack the cartels, ma'am, with the same intensity, commitment, and ferocity that we have terrorism. We have to. This has to be a whole-of-government approach. This is not a CBP thing. This is the Drug Enforcement Administration (DEA), FBI, our intelligence—

Senator ROSEN. Because there is a lot of money involved, so they are going to put everything they have into it. They do not want to lose it. If it is billions of dollars, they do not want to lose that.

Mr. MORGAN. Yes, ma'am. They are a multi-billion-dollar industry, and they are a talented organization.

Senator ROSEN. They are an industry. That is exactly right.

Mr. MORGAN. Yes, ma'am. Every time we do something, when law enforcement—we call it techniques, tactics and procedures (TTP). The cartels change. As soon as we do something to get them, they change. They continue to do that and history shows that. So that is a significant issue.

As we are talking about these things, that is something from the entire government, a whole-of-government approach, we have to address. I agree with Andrew that, realistically, are we going to totally decimate them? No. But we can hit them hard, and we should.

Senator ROSEN. This is where we can partner with those countries on both ends to maybe capture them in the middle.

Mr. MORGAN. Yes, ma'am.

Senator ROSEN. Thank you. I appreciate your time.

Chairman JOHNSON. Senator Sinema.

OPENING STATEMENT OF SENATOR SINEMA

Senator SINEMA. Thank you, Mr. Chairman. Thank you to our witnesses for being here today.

Our Nation faces a critical situation along the Southwest Border with serious security, economic, and humanitarian consequences for my State, Arizona. Today in Arizona, CBP and ICE are releasing asylum seekers fleeing violence and instability into our communities. One way we can protect our communities and uphold our values is by treating these children and families humanely and with dignity. I believe it is vitally important that DHS work with our NGO partners to make this asylum process as smooth as possible.

But our ports of entry also face uncertainty and disruption. The decision to transfer officers from Arizona ports threatens our security, including our ability to stop the flow of drugs into the United States, which is why I have asked CBP to reverse its decision and secure our ports of entry.

Our border security workforce is also stressed and tired. I have heard stories of officers who are working 16-hour shifts at our ports, leading to attrition and burnout amongst an already overburdened force. As we heard from our witnesses today, the number of migrants from Central American nations coming to our borders and seeking safety is high. So we need to tackle this issue with common-sense solutions.

I think Congress must focus on ideas and initiatives that improve our security, strengthen our economy, and uphold our values. I think we should oppose proposals with dangerous and harmful consequences such as closing the entire Southwest Border.

I am committed to working in a bipartisan way to finding solutions that keep Arizona families and communities safe and treat migrants humanely.

My first question is for Dr. Selee. The most important assets and resources we have at our ports are men and women who are working on the front lines. As I mentioned earlier, I disagree with DHS' recent decisions to remove officers from ports in Arizona. These ports were already struggling with vacancies and are now further understaffed, and I am wondering if you could talk about the im-

pact of long-term and chronic understaffing on security and trade at ports of entry.

Mr. SELEE. Thank you, Senator. I actually arrived this morning from Phoenix, Arizona, so I was talking with people about the consequence—

Senator SINEMA. I am very jealous.

Mr. SELEE. Yes. Always lovely to be in Arizona, actually, the great State of Arizona. It is a State—I have mentioned a few times because it really is so deeply connected. The border matters. It is 46 percent, I believe, of Arizona's exports that go to—

Senator SINEMA. That is right.

Mr. SELEE. But these are actually, as we were talking earlier, these are really production chains that span across the border where you have things moving back and forth and goods being made across—so I think the chronic understaffing of ports of entry and the lack of technology, which Chief Morgan mentioned earlier, the lack of investment in technology at the ports of entry is a major issue. This is something that we could fix, and it is something that it does not break the budget to try and address it, actually. It would be very well done.

I would disagree a little bit with Chief Morgan on one thing, which is the statistics that come out of CBP do indicate that if you take marijuana out of the equation, all other narcotics, overwhelmingly 85 to 90 percent do come through ports of entry. Now, marijuana does tend to move between ports of entry, and there are some other drugs that move between ports of entry, but they are fairly rare. Ports of entry is where the greatest threats are, actually, and it is also where the greatest opportunities are to make our country strong. We really do need to be investing there. I am not saying we should not invest between ports of entry. Clearly, we have urgent needs to do that at this moment right now. But we also really should not forget ports of entry. They tend to get missed, and they are so key to our economy. They are key to our security.

Senator SINEMA. Thank you. Speaking of that, Chief Morgan, in your testimony you mentioned the need to do better at stopping the flow of drugs between our ports of entry. What type of additional technology or resources do you think that the Border Patrol needs to meet that specific challenge?

Mr. MORGAN. That is a great question, Senator, and actually I agree that the majority of drugs are coming in in those categories—meth, fentanyl, heroin. It was the marijuana that I said. But here is the thing where I will depart, that the reason my statement is that in between the ports, because 50 percent of the border is wide open and not secure, we do not know what is coming through. At the ports of entry, we get to stop every person, every vehicle, so, of course, we should be interdicting more at the ports. We should really be afraid. The ports, but also in between the ports.

The technology that we need, there is a whole list of technology we need. We need fixed and mobile surveillance. We need better surveillance. We need updated surveillance. We need a capability to have that surveillance be interconnected from sector to sector. The list goes on and on. We can use more drones. All this stuff that

has been talked about, right? All that technology is absolutely needed, hands down, at the ports and in between the ports.

But here is what I will say, Senator, that technology by itself is not the answer, though. You still need infrastructure.

Senator SINEMA. That is right.

Mr. MORGAN. You still need some barrier where it makes sense—not sea to shining sea, and there is not an expert on the border who will ever tell you that that is what you need. You need more personnel. We call it the “multi-layered strategy,” right? We need infrastructure, the wall, physical barrier. We need technology and a lot of it, and we need personnel where it makes sense. It makes sense in between the ports and at the ports.

Senator SINEMA. I could not agree more.

My next question is actually for both of you gentlemen. As you know, charity organizations such as Lutheran Social Services and Catholic Charities, along with many others, play a critical role in helping manage the asylees who are entering the United States. In Arizona, sometimes the communication between DHS and these NGO's has not been as effective as it could be.

What steps do you suggest that CBP and ICE take to ensure that that coordination and cooperation with the NGO community happens to help prevent these crises?

Mr. MORGAN. Real quick, I will take this one, if you do not mind. I think that is right. In 2016, I saw it firsthand. I went down there, and I talked to a lot of NGO's, faith-based organizations. They are doing an incredible job, and they are very much an integral part of the solution, right? But where that really goes, it is local. It is. Those organizations are local, so it really is just a proactive—it is support from headquarters, obviously, but it really is coming on to local leaders to really interact with those local faith-based organizations and the resources of the local NGO's to really continue to establish those relationships.

What I saw in 2016 overall were really good relationships. That does not mean that they do not need to improve. What I have seen is they are continuing to improve, but I tell you, CBP is drowning, but so are all the faith-based organizations and the NGO's. They are tapped out, too, ma'am. They are all drowning.

Senator SINEMA. I have invited ICE Director Vitiello to join me next week to have a roundtable meeting with the NGO's to figure out how to better coordinate at least the communication, because what we see happening every day in Tucson, Yuma, and Phoenix are just influxes of these migrants who are waiting sometimes years to get their asylum hearing and showing up at bus stations. So the local communities are overwhelmed, and our NGO's cannot get there fast enough and do not have the resources to help everyone.

Mr. MORGAN. I think that is a great point, and better communication is always a good thing. I think what is happening is it is a cause and effect. Border Patrol, they get a caravan of 500 in that they did not expect. They are overwhelmed. ICE is overwhelmed, and, ergo, then the faith-based organizations and NGO's, they become overwhelmed. They may at times think there is a lack of communication, and really what it is is just everybody is overwhelmed

and doing the best they can to adjust. But more communication is always a good thing.

Senator SINEMA. Mr. Chairman, my time has expired. May I ask Mr. Selee if he wants to respond?

Chairman JOHNSON. Sure.

Senator SINEMA. Thank you.

Mr. SELEE. I will be very brief. I think what you are doing with Director Vitiello is exactly the right thing. I think you need to create those channels of communication. I agree with Chief Morgan; everyone is overwhelmed. I mean, we do have a humanitarian crisis. I think we can debate whether it is a national crisis, but it is clearly a humanitarian crisis at the border. Everyone is sort of, trying to figure out—it creates issues of cooperation among agencies, but also civil society. The more you can get people together and try and bridge those communication gaps, it would be incredibly helpful.

Senator SINEMA. Thank you.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Sinema.

I have about 2 hours' worth of questions, but let us start here. The major blue and red to the right of 2012 represents more than 850,000 people. In terms of the red, the unaccompanied children, I think it is important to note that about 70 percent of those are male, about 70 percent are 15 or older, 15, 16, to 17, certainly the profile of gangs.

The question I have is: Where have those 850,000 people gone? What kind of records do we have? They get their notice to appear, which the coyotes call their “permiso.” It permits them to go into America. Are they by and large lost? I think they had Operation Matador, a really focused operation on MS-13 gangs. I think the stat was 40 percent of those gang members came in as either part of a family unit, as a minor, or as an unaccompanied child. Where are the 850,000 people?

By the way, we talk about Dreamers. I would love to fix that issue. But we underestimate the number there as well. 700,000 have signed up, 700,000 did not that qualified. There are a couple million that are similar circumstance. They do not in some way, shape, or form qualify. Now we have got 850,000 people here. This situation just continues to grow more and more out of control. People in this country, really no legal status, living in the shadows, potentially being exploited. So anybody who can speak to what do we know about the 850,000 people, where are they, what are they doing, and what is their status?

Mr. MORGAN. Sir, let me back up even a little more. It starts with when we allow them into the country. There is very little that we actually know about them when we let them in. They either have no documentation whatsoever, or the documentation they have, it is impossible to do true vetting.

To a large degree, we again—and I said this before. We do not even know who we are letting in. So that dramatically reduces our ability to keep track of these people when we do not even know who they are.

Chairman JOHNSON. Again, because of *Flores*, I mean, the length we can really detain and lack of detention facilities, literally CBP

does not have the time—as hard as they try to determine is that the father or the sex trafficker, is that his daughter or is that his sex-trafficking victim?

Mr. MORGAN. Right. They are overwhelmed right now, and so Border Patrol now, instead of giving them to ICE, Border Patrol is releasing them directly because, I think the Commissioner said it accurately. He said 4,000 we are full, 6,000 is a crisis; we are at 13,000.

Chairman JOHNSON. By the way, CBP is not trained to do that, right? I mean, they are trained to hand them off to either ICE or the Department of Health and Human Services (HHS).

Mr. MORGAN. Correct.

Chairman JOHNSON. Now they are because HHS cannot accept them.

Mr. MORGAN. Correct.

Chairman JOHNSON. Not the numbers that are coming in. Now CBP is being tasked to do something it was never intended to do and is not particularly trained to do.

Mr. MORGAN. Correct. We give them that notice to appear, right? That does not mean anything. That does not mean where they stay they are going to go, that they actually go. We have no way of verifying that to the largest degree. Sometimes we give them ankle bracelets. They take them off. They all take them off. We do not know where they are or where they are going or what city they are going to, to a greatest extent. So we talk about stats. That is probably what I should have told you earlier. That is one of the stats that we should be doing a heck of a lot better on, is keeping track of where these people actually are. We do not know, Senator.

Chairman JOHNSON. Mr. Davidson, you spend a lot of time talking to the immigrants themselves. Can you speak to this?

Mr. DAVIDSON. I will tell you anecdotally they do take the ankle bracelets off, and it just occurred to me, on your earlier question about data, the ankle bracelet program is a subcontractor with ICE, the company that makes them. Maybe we could get information about how many of these ankle bracelets get cutoff and thrown away.

As I said, anecdotally—

Chairman JOHNSON. We will send out a letter.

Mr. DAVIDSON. When you go to the shelters, these people will tell you, if you talk to them long enough, yes, they are going to take it off once they get to where they are going. There are also stories of seeing garbage cans full of these things at bus stations all up and down the border as well. The ankle bracelet does not seem to be an effective alternative to detention.

We were discussing earlier the number of people who actually file an asylum claim after they get a notice to appear is half or less than half of those people actually follow through and file that claim. Giving someone a notice to appear and an ankle bracelet does not seem to be doing that much good and does not seem to be very effective. So more data on that would be, I think, revealing about just how common it is for people to ignore their ankle bracelet and abscond.

Chairman JOHNSON. Dr. Selee, I have asked my staff to kind of list for me the different categories of people in this country, again,

DACA recipients that signed up, that did not, in similar situations but not eligible for DACA. Do you have information on this?

Mr. SELEE. We are working on it, actually. That is what I am just looking for here on my phone because I have a bit of breakdown of in absentia rates. But it is incredibly—but that is a subset of that, actually, right? So we do not have good data on this.

Let me point out one thing which I think gets missed in the debate, which is sort of interesting. We used to talk—back when we were talking about mostly Mexican men crossing the border in the early 2000s, late 1990s, we were talking about people getting caught and returned, but we were also—and eventually consequence delivery, but we were also talking about people actually getting through into the United States. Very few people probably get through today. I mean, DHS did a study in 2017 where they tried to estimate the number of people who get caught. It is pretty high. It has gone way up, right? We are actually pretty good at detecting people—not perfect, but we have developed the capacity to detect a vast majority of people who are trying to cross illegally.

Where people are getting into the country is through here, right? I mean, this is the number, some of whom are legitimately here. Some of these people have filed asylum claims, in which case they are legally present in the United States while they are waiting for their hearing. Those people are, in fact, legally here, and we should treat them as legally here. Other people did not show up.

On the other hand, if 40 percent of the people, which I think is about right—I was looking for that number. It is a little hard to figure out in the mix of statistics. If it is 40 percent of people do not show up, 60 percent do. I do not think we should underestimate that people who we see as trying to game the system, most of them actually do try and do the right thing. People who may not even understand our system, most of them do try and do the right—now, do they drop off along the way? I do not know. Do some of them go back? Do people eventually show up and get denied asylum and actually get returned? We are missing a lot of these numbers.

Chairman JOHNSON. There is a lot we do not know.

Mr. SELEE. There is a lot we do not know.

Chairman JOHNSON. Yale researchers, using some different statistical methods, said somewhere between 16 and 30 million people are in this country illegally, even though everybody uses the 11 to 12 million estimate.

Chief Morgan, you are kind of shaking your head there.

Mr. MORGAN. I am sorry, and, Doctor, with all due respect, I have to agree on something, again, law enforcement on the border. So we just heard the chief of patrol last night on television say that of his 170 linear miles of border that he has to support, he has surveillance and situational awareness of less than 30 percent of that 170 miles. He has inadequate or no physical barrier whatsoever, and he does not have enough personnel to have and defend and have that operational awareness along those 170 linear miles. He says now with the humanitarian crisis, all his resources, personnel, are devoted to that. With all due respect, absolutely we do not have any idea what is going through. To say that we think the numbers of criminal aliens and other people illegally entering that we do not

know, that is impossible to quantify. It is impossible to say the numbers are lower than they used to be.

Chairman JOHNSON. Do you have an estimate of how much of the border, however long, 1,700 miles or whatever, is tribal lands?

Mr. MORGAN. I do not have those exact linear—

Chairman JOHNSON. But it is true that we cannot put CBP personnel there. Those are completely open, right?

Mr. SELEE. There is an agreement with tribal authorities. There are CBP personnel. Tohono O'odham is the primary one in Arizona, right, Chief?

Mr. MORGAN. Yes.

Mr. SELEE. There are CBP personnel. There are some restrictions. It has to be negotiated with the tribal authorities.

Mr. MORGAN. But I will tell you, sir, it is all done by interpersonal skills, and I have been down there. I was talking to one of the Border Patrol liaison agents, and the tribal folks just happen to love them. I went and met with the tribal leaders there, and it is a challenging, ongoing, kind of weird dance that is going on there. It is difficult. We do not have all the resources that we need on those tribal lands, though.

Chairman JOHNSON. I am going to let Senator Carper quickly ask a question.

Senator CARPER. Yes, thanks. Just a quick question. Dr. Selee, revisiting the *Flores* decision, your wisdom on that, please?

Mr. SELEE. You could do it, but what *Flores* gets you is, still a long process if they apply for asylum and detaining unaccompanied children. Fixing the asylum system gets you a process that is decided in months instead of years. It applies to adults, to families, to children. It becomes a much more expedited process. I would go with fixing the asylum system between the two.

Senator CARPER. Alright. Thanks. Is it possible to do both?

Mr. SELEE. You could, but it depends on your feelings about detaining children for long periods of time.

Senator CARPER. OK.

Chairman JOHNSON. Again, define "long." Right now it is 20 days, and you are saying months. Again, nobody wants to detain any people any longer, if we can. As quickly as we can adjudicate that first claim, not allow endless appeals, but fix that, be able to detain them long enough, because if we do not, we are not going to be able to remove them. So it is that combination. I do not know what the right numbers are, but that is what we need to work on in our Committee, and hopefully we can come up with a bipartisan solution there.

Mr. MORGAN. Sir, if I can just weigh in real quick on that, what I would say is I agree, we need to do both. It is not one or the other. We need to do both, because the challenge is when we have influxes, right? We could have a system of this process where we are going through the immigration process pretty fast, and all of a sudden we get an influx of 5,000 in 1 month. Now that system that works so well is overwhelmed. We have to have the flexibility and ability to detain these people while we are doing the best we can to expedite the process. We need both. We cannot just have this arbitrary deadline, and when it ebbs and flows, it is a crisis

mode, and we have to let people into the United States. We need to do both.

Mr. SELEE. Could I add one more thing, Senator?

Chairman JOHNSON. Sure.

Mr. SELEE. I think there are two other things we should consider in addition to detention. By the way, detention is always a legitimate option to make sure people get—but the other question is case management systems, not just ankle bracelets, which have been up and down—case management systems where we actually monitor people have been much more effective. They have only been pilot-tested, so we do not have enough data points yet. But they have been very effective so far, about 99 percent effective in getting people to their hearings and actually giving people counsel.

Chairman JOHNSON. That was a very limited study.

Mr. SELEE. It was a limited study, right, so we have to actually do more study. We should look at ankle bracelets and figure out, at what time do people take these off immediately or does it happen after 6 months when they kind of realize they can get away with it? I mean, if it is a short period of time, does it make a difference?

The second thing is actually giving people the right to counsel, especially minors, because there is a lot of evidence that people who have a lawyer are willing to try their day in court. That is a lot cheaper, by the way, than detaining people. So having people who are able to have access to asylum counsel, people will show up and try their luck, actually.

Chairman JOHNSON. Just not that final one.

Mr. SELEE. Right, and that is the thing to be—again, we need to follow this and see what works. I mean, again, I do not want to say this is an absolute either. What we know is people now who have counsel, there also is selection bias there. People who get counsel often think they have a good case, right? I mean, if you give it to people who do not think they have a good case, will it play out the same way? I do not know. We need to try and study it.

Senator CARPER. Alright. Thanks to all of you. Thank you very much.

Chairman JOHNSON. Somewhere there are some things we can agree on that will at least improve this. I am all for continuous improvement. Senator Hawley.

OPENING STATEMENT OF SENATOR HAWLEY

Senator HAWLEY. Thank you very much, Mr. Chairman.

Mr. Morgan, I was struck by something that you said in your written testimony, that every city in the United States is a border city when it comes to narcotics smuggling. That is something, I think, that many people, especially in the media, do not appreciate it, and I just want to amplify that.

In my own State of Missouri, in 2017, the State estimated that 760 Missourians just in St. Louis lost their lives to opioids. That is one in every 65 deaths. In 2016 that number was higher. I know from law enforcement in my State where I was recently Attorney General that we are awash with methamphetamine. It is coming over the Southern Border. We have a serious fentanyl problem. It

is coming over the border. We have a serious heroin problem. So is it safe to say that even interior States like Missouri are border States for purposes of narcotics smuggling?

Mr. MORGAN. Absolutely. I am a Missourian myself. I was born in Missouri. Absolutely, every single city in this country is a border city. Every single major metropolitan city and other rural are impacted by the crisis at the border. The drugs coming through the Southwest Border are entering every city in this country. That is not hyperbole. That is fact. Seventy-thousand-plus deaths, 90 percent of heroin coming from Southern Border, the Southwest Border crisis is everybody's problem in this country.

Senator HAWLEY. Very well said, and I just want to underscore that it is local communities, often rural communities, as you point out, local law enforcement who are left to pick up the pieces here. The costs really are staggering.

Mr. DAVIDSON, let me turn to you. Thank you for your outstanding reporting on this issue over many months. I just want to give you an opportunity to further tell this story here. Put this on the record for us. Who is it who controls the border on the southern side—not on the U.S. side but on the southern side. Who effectively controls that border?

Mr. DAVIDSON. Thank you, Senator. This circles back to something we touched on earlier that I wanted to distinguish between. There are smuggling networks, and there are cartels. They are not necessarily the same organizations. The smugglers are paying cartels as part of the package that migrants and migrant families are providing. They have to include this tax, right? But there is no question that the border is secure on the southern side, and vast stretches of the border on the southern side are controlled in an iron-fisted way by cartels and cartel factions, especially when we are talking about the gulf cartels. A lot of these cartels have broken up and fragmented over the past decade or so, especially in the Gulf Region across from the Rio Grande Valley, places like Reynosa and, across the entire area south of there to Monterrey. So it used to be that people would cross the border to work in South Texas. They would literally put their clothes in a garbage bag, swim across the Rio Grande, go to work, and swim back across at the end of the day. That does not happen anymore. Nobody crosses the border unless the cartels say so and unless they get their payment.

Senator HAWLEY. OK. That I think is such a key point, that the cartels effectively control the border, and nobody crosses the border without their buy-in, their payoff, essentially, and this is why you refer to this operation on the southern side as a "vast money-making machine." It is a money-making machine for the cartels and their various spinoffs. Is that correct? Explain that to us just a little bit more.

Mr. DAVIDSON. It is a money-making machine for the cartels because they are controlling who crosses, and nobody crosses unless they pay. It is also a money-making machine for the smuggling networks that begin in Central America. They are essentially like travel agents. They are just arranging logistics to get people from locations in Central America across the Guatemala-Mexico border and then transiting through Mexico and paying off different people along the way, local officials, different cartel factions along the

way; and then when they arrive to the Northern Border, paying off the right people so they can be allowed to cross the Rio Grande. It is a controlled, intentional system along the Northern Border where cartels are holding people and telling them who is going to go across, how many people, what groups are going to cross where. It is coordinated. It is organized. According to law enforcement, it is also coordinated with other drug-smuggling activities in some areas where they are sending a large group across, tying up all of Border Patrol's resources, and a mile or two down the line sending across drugs or sending across people who are trying to evade detection who have paid a lot more money. If you try to evade detection, you pay more, and they cross you in a different area.

Senator HAWLEY. It is very strategic, is what you are saying.

Mr. DAVIDSON. Yes, absolutely.

Senator HAWLEY. You might get the sense from just looking at news footage that, it is sort of chaos, folks who are coming individually of their own accord.

Mr. DAVIDSON. It is chaos on our side.

Senator HAWLEY. Right.

Mr. DAVIDSON. It is organized on their side.

Senator HAWLEY. On their side. You also say that the cartels are using kids as "Get into the U.S. free" cards. Just explain that for us, if you would.

Mr. DAVIDSON. It is hard to know for sure, right? A lot of this is anecdotal. But if you have a child with you, you can claim asylum, and people on the south side of the border understand that, and they know that. So not all the minors that are accompanying adults and that are presenting themselves as family units are family units. I am sure Mr. Morgan can speak to that in more detail. But it certainly is known that if you cross with a child, you are going to be treated differently. The smuggling networks, the travel agencies that I mentioned earlier, they understand that, and they are incorporating that into their sales pitch, saying, this is why a lot of people are showing up with just one child where they have a wife and other children back in their home countries that they did not bring with them because they could only afford to bring one.

Senator HAWLEY. Mr. Morgan, do you want to add to that?

Mr. MORGAN. Everything he just said was correct, and I would say go back to the Chairman's chart,¹ right? Big blue. That is why you are seeing big blue. A lot of the stuff we are talking about to some degree, with all due respect, it is white noise. Now, I am not saying we do not need to do all this work with Mexico and Northern Triangle countries. Yes, E-Verify, all this stuff needs to be done. But until we fix *Flores* and until we fix TVPRA, that blue line is going to keep growing and growing because they know, grab a kid, come in, set one foot on American soil, and you are in. If we do not fix that, it is not going to stop.

Senator HAWLEY. I just want to make sure that we get crystal clear and that the public understands that what is happening in my home State of Missouri with the drugs that we are facing, with the onslaught that we are facing, is directly tied to the behavior

¹The chart referenced by Mr. Morgan appears in the Appendix on page 86.

and strategy of these cartels on the border who control effectively the Southern Border, who have a strategy for conducting their business operations and who are making vast sums of money at our expense and at the cost of lives in our home States.

Mr. MORGAN. I will give you one more quick example. The cartel will actually send in an old military term called observation posts and listening posts (LP/OP). They will actually send smugglers or cartel members miles into the interior of the United States side—miles—with communications, sophisticated communication devices, with surveillance equipment, and they will actually monitor the activities of the Border Patrol. They will actually then use the caravans—and right now you are seeing some of these caravan, sir, actually go to really remote areas. The cartels are forcing them to transverse really adverse terrain. Why? The Border Patrol has to take a long time to get there, and while they are, their LP/OP says, “Clear to go to this section,” and stuff is coming across.

Senator HAWLEY. Thank you, Mr. Chairman.

Chairman JOHNSON. First of all, excellent line of questioning. Our compassion is completely being exploited. It is. We know how to secure the border, or somebody knows how to secure the border. It is just not us. It is the drug cartels.

I did hear the Secretary—can everybody confirm this?—just recently say that they are breaking up child recycling rings. Apparently we do not take biometrics on children 14 or under 14, and so those children can be sent back over the border to be hooked up with another adult to come in. Does anybody have—again, I heard the Secretary talk about that, so I am assuming it is true.

Mr. MORGAN. I do not have any stats, and I do not think they have those stats yet, but, again, anecdotal, absolutely happening. The children are being recycled, and we are seeing—again, I do not remember the exact stats, sir, but thousands—Border Patrol has identified thousands of people that are claiming to be a parent or guardian, and it turned out to be completely false.

Chairman JOHNSON. Just real quick, before I turn it over to Senator Peters, the drug cartels for years have been using minors as mules; because they are minors, they do not get prosecuted the same way. That will continue as well, correct?

Mr. MORGAN. Yes, sir, absolutely. I would say it is going to expand.

Chairman JOHNSON. Senator Peters.

Senator PETERS. Thank you, Mr. Chairman. Before my question, I have a statement from Church World Service¹ that they would like to have in the record, and I would like to enter it into the record by unanimous consent.

Chairman JOHNSON. Without objection.

Senator PETERS. Thank you, Mr. Chairman.

One thing we have talked about—we have unpacked a lot of issues related to dealing with the situation on the border, but to me, as I listen, it is clear that Mexico is an important player in all this, and I understand, Mr. Morgan, some of your points about other things that we should look at. But, nevertheless, folks, to get to the United States, have to go through Mexico in order to get

¹The statement referenced by Senator Peters appears in the Appendix on page 87.

there. I remember being on the border, actually on the trip that we were on a couple years ago, on the border with Guatemala and Mexico, we walked across the bridge where the officials were and where they had control. But if you looked to your right and if you looked to your left, there was basically a flotilla of boats going back across the borders that were very porous, to say the least.

We need to actively engage the Mexican Government in this, and it sounds as if they are, at least based on the testimony we just heard, they are not in control of the Northern Border. It is the cartels that are in charge of the border.

Dr. Selee, I would ask your assessment of that. Is Mexico just unable or are they unwilling to address the large number of folks? Or is it a combination of the two? How would you assess the Mexican Government right now?

Mr. SELEE. I would say two things, actually, on that, and one is, I think we should also be mindful there are sort of two other actors. American consumers of illegal narcotics are also funding the cartels that control. We are actually the financers of some of this. But the other actor that is in the play here is the Mexican Government. It is particularly immigration authorities in Mexico that are often in league with the smugglers. I am sure you have run into this a lot as well. The smugglers, the other people they pay off besides the cartels at the border along the way is the Mexican immigration authorities, both in southern Mexico and at checkpoints along the way. The Mexican Government has said that they want to clean this up. I think there is—at least in some levels of the government, I believe that. I think there are some people they have put in place that have a record of fighting corruption that want to do this. I think it is a big question. It is not the first time I have heard this said in the Mexican Government, however. It is a tough thing to do. I think that is one area where we could actually play a pivotal role in working with the Mexican Government on how you actually begin to clean this up because it goes very deep, and it is part of the business model of how the immigration authority has worked for a long time.

Senator PETERS. I would like you to do a deeper dive into that statement. What sort of leadership would we need to see from the United States to make that kind of change and to work with the Mexican Government for them to step up their actions?

Mr. SELEE. I think there are sort of three things that Mexico wants to do. One is to increase their legal pathways, so their asylum system, they need to finance it. We could put in some incentive money, but it is sort of like we heard earlier, sort of you put in one—they put in seven, we put in one. We can help them, but it is their job to do. They want to create work-based visas. They need to do serious enforcement. They have done—Mexico deports more people than we do. I mean, this is to Central America. It is a little-known secret. The Mexican Government actually does deport a lot of people, and they have for years, since 2014. But that said, there is neither a real structure around it to figure out sort of the consequence delivery that we did in the United States, nor is it done with respect for human rights. I mean, on both sides. Neither as an enforcement question nor as a rights question is it great.

The third thing is cleaning up corruption, and there, intelligence matters, and also law enforcement experience matters. How do you cleanup an agency? We have a lot of experience in this. How do you deal with a situation where your agents can make three times as much money by being corrupt? How do you actually keep them on the right—what are the sort of incentives that keep people on the right path? How do you recruit the right profile of people?

Look, we deal with this all the time at CBP. This is an issue in ICE, right? We actually have a pretty good track record. People have huge incentives to go off the right path, and most people do not do it. Right? I mean, we have figured this out. Mexico has only begun to start figuring—I think that they need to figure this out. A lot of know-how and a little bit of intelligence on what we know, because we know a lot of stuff about where the smugglers are paying people off as well, helping them figure out those specific points that are probably of greatest concern.

Senator PETERS. In a Judiciary Committee hearing, previously you testified that there were some things that you saw potential. I think you have highlighted a couple right now. Only a few months have passed since that, but give us an assessment. Have you seen them actually taking any action along the lines that you thought had potential a few months ago?

Mr. SELEE. I think they have not increased funding to the asylum system. They keep talking about doing it, but they have not done it as yet. They have not invested in the Immigration Institute as yet, although I think the person in charge of the Immigration Institute is someone who is serious about cleaning it up. It is someone I have known for a while. I believe, his previous job, he was someone who cleaned up an institution. I think if anyone can do it, he can do it. But I think there is a question mark, and we have not yet seen the kind of efforts that would create work-based visas. But 4 months in, that is probably unrealistic. I mean, the reality is that takes some time to figure out how you are going to do it.

Mexico has work-based visas but for higher-skilled individuals. What they do not have is work-based visas for the kind of people that we are talking about in this flow who are lower-skilled. You have to be able to match that where there are actual job opportunities, so you are not creating conflict in parts of Mexico where there really is a job competition.

It is probably too early for that. I see some good signs on the corruption side. I see less yet on changing the structure and changing the visa side. Enforcement is on autopilot. I mean, they are not doing less—they did not drop their guard and sort of let people cross the border, and at the same time there has not been a lot of innovation also about how you do enforcement as yet.

Senator PETERS. But in a sense, active involvement by U.S. officials with the Mexican Government you think is promising?

Mr. SELEE. Yes, I think it is promising. I think there is a lot of—

Senator PETERS. Because we have not seen enough of that or we have not seen nearly enough of that, is your contention?

Mr. SELEE. Right. Senator, I think there there are some good people there, and there is a willingness to do it. If we partner with them, I think it will get done quicker than if we threaten them.

Senator PETERS. One final question, Mr. Chairman, and I will let you take the rest here with your questions. You raise an issue that Mexico deports more Central Americans than we would otherwise suspect. Who are they deporting? We are still seeing the flow north to the United States. Have they reduced that flow? Or are they deporting a different set of individuals?

Mr. SELEE. Mexico deports, I believe it is, about 100,000 Central Americans more or less a year. I mean, it is actually a large number. It is more or less steady. The numbers actually rose in March. I think they deported actually 13,000 people. They apprehended 13,000 people in March. I do not know the deportation statistics—no, actually I do. It was 12,000. It has actually gone up a little bit over the traditional number, but it has sort of been a lag. But it is and Mexico does not actually have some of the same limitations on detaining people. They actually deport them fairly quickly.

Now, a lot of people are applying for asylum in Mexico as well. So it has a significant—they are on target of about 50,000 applications this year from Central Americans.

Senator PETERS. Central Americans see Mexico as the first safe country?

Mr. SELEE. Increasingly. By the way, I think, something that Chief Morgan said, I do not think Mexico is yet in a position to be a safe third country. But if I were—again, this goes to policy overreach. I mean, we have wanted Mexico to declare itself a safe third country and sign an agreement with us. What would be more productive is actually starting a conversation saying, "We want you to be a safe third country. Let us think about 5 years from now. How do we get to that point where you meet international standards in terms of the protections you give people? Let us see if we can get there." That actually might generate a productive conversation with Mexico, the Mexican Government, about how they get to be a safe third country, basically a country of first asylum, rather than say, "You have to do it tomorrow," because tomorrow, they would throw up their hands and say, "We cannot do it. We are not in a position to do it. It is not safe for a lot of migrants." They are right. But does that have to be the case in 5 years? OK, what are the steps we follow? What do you actually have to have in terms of your own procedures internally? What do you have to have in terms of protections for people who are applying for asylum? That is the kind of thing they could get there. But we should get into that virtuous conversation, virtuous cycle conversation with them.

Senator PETERS. Thank you.

Chairman JOHNSON. Would it be a pretty good assumption that the people that Mexico is deporting are the ones that do not have the money to pay off the officials? Anybody want to chime in on that one?

Mr. SELEE. I would guess. I would say that is probably the case. You may have some virtuous officials. I would not discount that, and I have been surprised by this again and again with Mexican law enforcement that you actually do have people who do the right thing and people who are in very corrupt structures who turn out to be incredibly law-abiding and actually in it for the right reasons. I think there also may be people who are not bribable, but I would

guess it leans heavily toward people who are trying to go on their own rather than people who are organized.

Chairman JOHNSON. Again, I think I am trying to point out again the lucrative nature for the drug cartels who are businesses. They expand their product line into a more profitable and less risky line of business with human trafficking, correct?

Mr. DAVIDSON. Sure, absolutely. I was going to add as well that there is some reporting to suggest that what was once the Gulf Cartel, the Zetas Cartel, which has sort of broken up into a bunch of different cartels in Reynosa, across from McAllen, that cartel faction is making more money off of migration now than it is off of drugs, and that has become their chief enterprise in that city, which is a very high-volume area, the Rio Grande Valley, but McAllen in particular. Part of the reason they are able to get people across is because the cities come right up next to each other on the river. It is a matter of minutes after crossing the Rio Grande that you can be in a safe house or you can be in a vehicle on the freeway and gone. It is an opportunity for them to move families that are seeking asylum, but also people who are trying to evade detection who are paying more. It has become very lucrative in the McAllen-Reynosa area.

The other thing I would add to the question about Mexico, there is a political problem in northern Mexico. Central American migrants are not very popular there, and there is not a lot of patience for having large numbers of Central American migrants staying in these northern Mexican cities. The incentives for politicians to do things to help migrants or to keep them there is not very high. The incentives go the other way. They want to move them along, either to deport them back to Central America or to get them moving across in the United States. But they do not want them to stay in these places in northern Mexico, in these cities.

Chairman JOHNSON. I met with the Ambassador from Mexico, the new administration here, a couple times. She has brought in government officials. I personally think they seem to be pretty sincere about wanting to work with us because they realize it is a real problem for their country as well.

I was struck in my last meeting that they all talked about development dollars, which, again, you have economic opportunity, that reduces the draw. But they never mentioned what I then brought up, the 800-pound gorilla, which is the drug cartels. Part of the problem in terms of enforcement—and, Senator Peters, I think you were with me in Guatemala when I think we heard the story. A new police official in Guatemala gets a little digital versatile disc (DVD) from the drug cartels. It shows his wife and children going to church or children going to school. I am not even going to tell the stories of the horrific abuses in terms of the kind of retributions. Of course, then those drug cartels create such a level of impunity, which I was struck by that. They said, "We are dealing with two things: corruption and impunity." I understand corruption. Impunity is the drug cartels are untouchable because of our insatiable demand for drugs, which we funded. They are untouchable, and that impunity bleeds into the rest of society, which begins the extortionists, the rackets, go to cab drive, \$10 a week or we will put a bullet in your brain and we will set the car on fire.

I do not see how these individual countries with that level of brutality, that level of threat to any public official—and they have had plenty of examples of people being horrifically murdered—how they can do it on their own. I think the only solution is some kind of multinational task force and an all-out effort across the board. But even that, Chief Morgan, you were with the FBI. These drug kingpins, it is not like they are isolated in a little villa within a peaceful little village. Those villages are dependent, their economies, on those drug kingpins and the drug trade.

How can you even—again, it sounds nice that we need to cooperate with Mexico to start disrupting these things. I mean, I look at this as such a horrific problem. Can any of you speak to that? Are my assumptions just wrong? We will start with Chief Morgan.

Mr. MORGAN. Chairman, you are 100 percent correct, and you started off this hearing by saying long term/short term. What you are talking about, what we are talking about dealing with Mexico, look, I do not want my testimony to be mischaracterized. I am not saying we should not continue to work with them. What I am saying is that is a long-term—to some degree you could make the argument to totally eradicate the cartels is an unrealistic expectation. It does, it needs a massive, whole-of-government approach, multi-national approach to target this, and, yes, but that is long term.

Chairman JOHNSON. By the way, we have tried that in Colombia. We have had some success, but the Revolutionary Armed Forces of Colombia (FARC) still exists.

Mr. MORGAN. Exactly. That is the point. It took a long time, too. I was attached to CBP in 2014. I know that they have been working with Mexico for a long time. They are working really hard with the Mexican officials. They have been talking about safe third country for years, and we have gotten no traction whatsoever.

Yes, we keep doing this, and we keep working this. We target the cartels. That is long term. But guess what? Next month there are probably going to be 115,000 people. Your chart is going to continue to go like this—

Chairman JOHNSON. Oh, yes, by the end of the year it will be up toward the ceiling.

Mr. MORGAN. Yes, sir. It is a crisis. In my law enforcement experience, any crisis or emergency takes immediate need, immediate swift and bold action to address the crisis. While we are talking about all this stuff with Mexico and Northern Triangle, that is great and it sounds good. But, one, in the past it has not come to fruition. Two, that is long term. Three, it is not going to stop the 115,000 coming next month. We need to do something now, and I still stand behind my testimony. A congressional fix of *Flores*, TVPRA, and we make these individuals wait in Mexico, and we push resources to the border to expedite the asylum process. If we do that, you are going to take the incentives away.

Chairman JOHNSON. Just listening to Mr. Davidson and the control of the Southern Border by the drug cartels and the kind of dollars you are talking about, there are hundreds of millions. What we are going to expend—I mean, I am not suggesting this by any means, but the economics of this, they are controlling the border for a couple hundred million dollars.

Mr. DAVIDSON. Yes, absolutely. I think this is in my written testimony. By way of comparison, if you take \$800 a person as the tax for the cartels in the Gulf Region, that is, \$138, \$135 million for fiscal year 2018 that would have gone to the cartel factions in the Gulf Region. The entire amount, I believe, that we have appropriated for the Merida Initiative for Mexico for this fiscal year is \$145 million. It is not nearly enough. I would add, too——

Chairman JOHNSON. But what we are spending trying to get some level of security over our border, with these broken laws, which create the incentive, I mean, we have no hope.

Mr. DAVIDSON. It is a drop in the bucket. I would add, too, that this idea that we are going to close the ports of entry if Mexico does not do more is not very productive because we are asking Mexico to do something it cannot do. Mexico does not exercise sovereignty over all of its territory, and we cannot ask the Mexican Government and threaten the Mexican Government with closed ports of entry to do something that it is not able to do, which is to exercise sovereignty over these areas in northern Mexico where sovereignty is effectively being exercised by drug cartels.

Chairman JOHNSON. Again, my point is we have to recognize the true reality, what we can actually accomplish versus what is, if possible, a long way in the future with many speed bumps along the way here.

I want to go back to what has happened to the 850,000. What is their legal status? OK, they have claimed asylum. They have a notice to appear. Their court date is sometime way out in the future. What are they doing in the interim? Mr. Davidson, I think you talked about a lot of them already have work, but they are not working in this country legally. I believe it is after 6 months they will get a work permit, but initially for the 6 months, what are they doing?

Mr. DAVIDSON. It was mentioned earlier that we are funding the Mexican drug cartel profits. Because there is an appetite for illegal narcotics in this country, there is also an appetite for cheap labor. They are engaged in all kinds of industries in all corners of the country. These folks are going from points on the Texas border, they are going to Florida, they are going to Virginia, they are going to Illinois, to Wisconsin, Oregon, Washington. They are working in agriculture, but they are also working in construction industries all across the country. They are working in service industries all across the country. They are coming here because people are hiring them. Companies in the United States are hiring them and paying them, likely in full knowledge of the fact that they are not here in a legal capacity. So the appetite for narcotics is——

Chairman JOHNSON. That is how employers can really exploit somebody. “Oh, I am not paying you enough? Well, complain. I will call ICE.”

Mr. DAVIDSON. Absolutely. It happens all across the country, as far north as—I have seen it personally happen in fish-buying camps in Alaska that employ illegal labor. It is endemic. It has been going on for decades and decades. I think as part of the long-term solution, figuring out a way to get people who want to come here to work, to come here in some legal capacity, if it is a temporary guest worker program of some kind, I think you would see

a lot of the people who are in this right-hand column who are coming here to work, but claiming asylum and bringing a kid with them would move into a legal framework where they are coming in legally to work temporarily and go back home at some point.

Chairman JOHNSON. Again, that would be my suggestion. If you have a rapid adjudication, is this going to be a valid asylum claim or not, as soon as you say, OK, it is going to be valid, here is your work permit and we talked about this earlier. I have the guest worker permit governed by the States. Then we actually know where people are going. We can kind of keep track of them. The States would have some responsibility for making sure we keep—so, again, the whole point of this thing is this is out of control. We need to bring this system under some level of control. This is unacceptable for everybody. This is not humane. Senator Portman had a hearing on this, but in Ohio, I think there were some minors that were pretty much put into involuntary servitude on a farm? We have had all this publicity on the sex workers in massage parlors and stuff. These people are being exploited. There is nothing humane or compassionate about that.

Mr. SELEE. There are two questions—we have not talked about it in these terms, but there are two questions that we need to answer here. One is how you deal with a wave event, right? What essentially is a tipping point where people start coming in large numbers. How do you change that so there is another tipping point and people—and that goes down?

The other question is how do you deal with the long-term structural challenge, right? Those things are interrelated, but they are not necessarily the same thing. Malcolm Gladwell has this book, "Tipping Point," where he says multiple things interact to create a wave and then multiple things have to interact to stop that.

Clearly, the legal changes is a big part of that. I agree. That is clear. But, also, it makes sense to go after smugglers, right? It makes sense to figure out if Mexico can begin to absorb some people or at least create the expectation that they are about to absorb some people. It makes some sense to see what you do on the ground to give some people hope. Maybe you try a pilot program on asylum or refugees or parole authority in-country, which does not affect a lot of people because it is a pilot, but it creates a hope that maybe you do not have to make the journey. There is not going to be one thing that changes everything. But there could be many things, and then you have to figure out what you do long term.

Chairman JOHNSON. Yes. Again, I think you have to separate out these potential solutions, again, the likelihood of them having an immediate impact on a problem that is at crisis levels right now versus something that in the future this will have an impact, but it is going to take quite some time.

In questioning with Senator Hassan, you were talking about some of the actions the Administration has taken could be a signal saying, "You better get in here quick because" What was going through my mind and I will make the point now. That is the problem, and this is across all Administrations. There are only limited things you can do administratively.

Mr. SELEE. Yes.

Chairman JOHNSON. Whether it is the Obama Administration, the Bush Administration, or the Trump administration trying to grapple with this, with what they can do regulatorily, it does not work. It is just simply not effective. We have to change these laws.

Again, this is the responsibility of Congress. We have to do the problem-solving process, identify the problem, look at the root cause, identify an achievable solution, separate out immediate effect versus long term, things we need to do long term, but what do we need to do short term? Would people agree with that?

Mr. MORGAN. I completely agree, and here is a point, Senator. Again, you reverse *Flores* and give CBP and ICE the ability to detain these people and expedite the immigration process, and you reverse TVPRA so that you apply the same standard to everybody, you are going to end catch-and-release. Congress can do that. Those two things will end catch-and-release, and they will remove the incentive so that immigrants will stop paying the cartels money to come here because they know they are just going to turn around and be removed. The cartels will come up with another scheme and adjust their TTPs to start doing more stuff, more drugs, etc., but you are going to cut that off. I cannot emphasize that enough.

Chairman JOHNSON. That is why I started with Michael Chertoff's example.

Mr. MORGAN. Yes, sir.

Chairman JOHNSON. A much smaller size problem, but significant, and the impact was almost immediately, and it worked.

Mr. MORGAN. We are clouding the issue—with receiving 100,000 last month alone, we are clouding the issue with all of this other stuff, when right now reverse *Flores*, fix TVPRA, and you are going to end catch-and-release dramatically, and you are going to see the numbers go down. That could be done immediately while we are doing everything else that needs to be done.

Chairman JOHNSON. Dr. Selee.

Mr. SELEE. I would throw in one thing. One thing that Mr. Davidson has mentioned a couple times that I think is worth noting is you were talking about what used to be the Zetas, the groups that are left over from the Zetas and the Gulf Cartel. These were two of the most powerful cartels in Mexico. The Zetas, there was a time not long ago, 7 or 8 years ago when we talked about the Zetas taking over Mexico because they were so fearsome. They are gone. Now, they are gone relatively speaking. There are lots of little groups that are little Zetas hanging out there, and there are lots of little Gulf Cartel groups. It is not perfect. Right? I mean, we did not solve the drug-trafficking problem. We did not solve the question of control. But we did create—and this was Mexico and the United States working together to go after—really targeted the Zetas and the Gulf Cartel at a time they were allied and said: "This is a group that is getting too powerful. We are going to degrade them to the point where they are a local threat but no longer a national security threat."

We have never actually looked at this with smugglers in the same way. We do actually have an ability—as much money as there is in this, as much money as they can bribe local officials and so on, there is actually a pretty good track record when the United States and Mexican Governments share intelligence and target to

go after—and I am not suggesting, by the way, that we go dismantle all the trafficking groups. I think that is unrealistic, probably unnecessary, but throwing a little bit of deterrence and throwing a little bit of a monkey wrench in what has been a fairly smooth operation for smuggling groups would not be a terrible idea.

Chairman JOHNSON. Again, all for it. Anything we can do to degrade that evil would be good. How distinct are the drug cartels from the human traffickers? Again, I just kind of assumed that they just sort of spun—it is an increase in the product line. Now, maybe they have split off in different divisions. Are these totally separate groups, Chief Morgan.

Mr. MORGAN. Look, I have been doing investigations for 25 years, and it is all well and good to target the traffickers and smugglers, but you have to go to the head of the snake. Right? If you go after one smuggling entity or one group of traffickers, you eliminate them, and the other one will take their place. You have to cut the head of the snake off, and so you have to go after the leadership of the cartels.

But I think John explained it best, that they are like a McDonald's franchise. They are independently operated and owned, but they still belong and still have to pay to the over-governing franchise. Yes, they do not own anything, the smugglers or traffickers. They have to pay for their routes. They have to pay to work in a certain plaza. They have to pay a tax to the cartels to be able to facilitate what they are doing.

Chairman JOHNSON. Mr. Davidson.

Mr. DAVIDSON. I would just add to Andrew's comments and to Mark's comments as well. The fracturing of the cartels that happened, the Gulf and the Zetas Cartels, has also created a diversification of what the cartels do, so you are now seeing gas theft on a mass scale throughout Mexico, fishing theft, and then, migration as a source of income as a way to diversify income streams. The legalization of marijuana is part of this in the United States. The profits that they made from selling marijuana have gone down. They have sought to replace those income streams through monetizing migration.

Putting pressure on them has these sort of ripple effects that we do not always see. The spike of violence, Reynosa is one of the most violent cities in the world right now, right across from McAllen, Texas. It did not used to be that way, but breaking up the cartels there, ending what they call the "cartel peace," has caused an explosion of violence in Reynosa as cartel factions fight, and fight over income streams and over territory.

I have to agree that doing something to reduce the incentives to the customer, to the families who are paying the cartels is—you have to do that. That is not going to solve the cartel problem in Mexico. But it might affect this part of it, which is the monetization of illegal immigration.

Chairman JOHNSON. Right. Until we reduce our demand for drugs, we will still keep funneling billions down there.

I believe it is true that we have authorized more CBP officers than we have hired, because it is a real problem. I am all for hiring more CBP officers, but how do you do it? I want to talk to you,

Chief. I come from a manufacturing background where we operated 24/7. I am not sure there is any industry in the private sector that operates 24/7 with three shifts. Again, there are 168 hours in a week, and if you divide that by 3, I think that is 56 hours per shift, versus divided by 4 it is 42. And so you do not burn your people out.

What has amazed me is—and I think this is a true statement—most government agencies that operate on a 24/7 continuous shift basis do it three shifts. Then they have to work overtime and it fatigues people. It does not lead to, from my standpoint, probably very good job satisfaction. If you like working 56 hours a week—and there are not too many Americans that like that day in and day out. Everybody likes the overtime, but by and large, people kind of like to stick within that 40-some-hour work week.

Can you speak to that in terms of your experience with CBP?

Mr. MORGAN. I think we should be looking at all options to address the issue, because the issue of not hiring enough people, it is real. It was an issue when I was there in 2016, it was an issue before that, and it is an issue now.

What I do think is there are a lot of other organic issues that really is the issue. I am not disagreeing with you that this is not something we should take a look at, and this may assist. What I do not believe in my experience, though, is it is going to really adjust the needle to any great degree, CBP's ability to hire people.

Chairman JOHNSON. What is the number one thing we have to do? We did kind of correct the lie detector, which was disqualifying an awful lot of folks. What is the number one thing that you think we need to do to make sure it is an attractive enough job so we can actually hire up to the authorized level?

Mr. MORGAN. I think they need to continue to do what they started a little bit after I left. We talked about it while I was there. They really have to go out into the interior of the United States, into the Midwest. When I was there, you would go out to the Midwest, and a lot of people had no idea what CBP even was. They were really concentrating on more the border cities and the border areas, and they were really tapped out. I really think if they go into the interior United States—they have been, and I have seen that, and it is being effective. I think they need to continue to do more of that.

Chairman JOHNSON. I just want to thank all of you. I really think really your testimony was excellent. I think this was a great exchange, a lot of good issues brought up by Members. I will give each of you—and I will start with Dr. Selee, just something that you want to get off your chest here that we did not cover or, just kind of summarize what we need to do. Again, right now I am thinking short term. What I want our Committee to concentrate on is let us try and address this short-term crisis as effectively as we can, because we have to change laws and what is that going to look like. If you want to chime in on that, I would be happy to hear your comments.

Mr. SELEE. I will just repeat what I have said already. If we want to change one thing legislatively, although it could probably be done as a rule change administratively as well, I would change the asylum system adjudication. It is the thing that you can con-

vince people is both fair to people who are asylum seekers, but also tough-minded with people—

Chairman JOHNSON. Let us drill down on that. Do you think we should have a higher hurdle rate—right now, my understanding, the credible fear, the way that is interpreted by the court is you have about a 10-percent chance of actually proving your asylum claim.

Mr. SELEE. Yes.

Chairman JOHNSON. If we increase that—

Mr. SELEE. About 80 percent—

Chairman JOHNSON [continuing]. To a different standard, again, I am not a lawyer. These types of things drive me nuts. But, people seeing a significant chance, is that what you are talking about?

Mr. SELEE. No. I am talking about, I think, that you do not send the cases to the immigration courts at all. You send them straight to an asylum officer. The U.S. Citizenship and Immigration Services (USCIS) has asylum officers. We do have to make some investments, although we also have trained officers—

Chairman JOHNSON. Which I think people are happy—do you believe that on a bipartisan basis people would accept the determination of those individuals charged with making that initial determination that would in effect be final?

Mr. SELEE. Yes.

Chairman JOHNSON. The more people that do not meet that initial bar and we remove them.

Mr. SELEE. I think you could get a broader consensus around it. I do not think you will get everyone on board. I think you are going to get some people on both the left and the right that will not be comfortable with it. But I think you will get a broad spectrum of people who can agree that it is both fair but tough-minded. It makes our asylum system have integrity. The asylum system should not be used for labor migration. It should be used for protection. That is the right thing to do. So if we do that—

Chairman JOHNSON. It probably should be pointed out, those people that get returned can always go to the U.S. embassy, claim refugee status, and wait in line as an economic migrant.

Mr. SELEE. Right. I mean, they could try and, get an agricultural visa or do something else. I think we do need to do some work with Mexico. I think that, frankly, the more the Mexicans can send signals that they are going to try and make their asylum system work and do some labor migration and they do credible enforcement, it helps us. I think the worst thing we could do is sort of pull out of Central America because I think we will add to the wave. Right? I mean, it is a perception thing, but it is also probably a real thing for some people will add to the wave. I think we have to hold the line on that.

Chairman JOHNSON. I have said repeatedly, of all the causes, the number one root cause of our unsecured border is America's insatiable demand for drugs.

Mr. SELEE. Yes.

Chairman JOHNSON. But taking drugs, it is not a victimless crime.

Mr. SELEE. No.

Chairman JOHNSON. I tell young people all the time, if you think that, come down with me to Guatemala, and I will show you a shelter for sex-trafficked little girls that is kind of being fueled by the drug trade as well. Mr. Davidson.

Mr. DAVIDSON. I agree with everything Andrew said about trying to streamline the asylum process. I cannot emphasize enough how much this is driven by word of mouth. If word gets back to these communities in Central America that you cannot actually get in if you bring a child and you cannot just claim asylum if you do not have a valid claim, that you will be detained and deported, I think it will affect the wave quickly.

Chairman JOHNSON. Can I just point out, 850,000 people that have these and people in Central America have these [indicating phone], so it is not just—it is using technology.

Mr. DAVIDSON. That is what I mean. They are in touch with their families and their networks and their communities in Central America. And so word will get back quickly that you cannot, in fact, get in. People are pawning their houses and going into debt to loan sharks to be able to pay the fare to get in, to make it north to the border and to get across. They are not going to do that if they have a strong reason to believe that they are going to get detained or deported. I think, that is the number one thing you can do to address this problem.

Chairman JOHNSON. It is tough love, but it is, I think, something we have to do. Chief Morgan.

Mr. MORGAN. Just to recap what I have said, I think that, again, I agree actually with everything both these gentlemen said, specifically with streamlining the asylum process. But, again, to reiterate, to fix this problem immediately, we have to remove the incentives. If you do not remove the incentives, in my opinion, everything else is a little bit of white noise. The major things that we can do right now to remove the incentive is to allow the border security experts to detain these individuals, i.e., fix *Flores*, the *Flores* Settlement; two, they absolutely need to reverse TVPRA and make sure that it is applied to everybody so we do not have that mandate, because right now, as I have said, grab a kid, enter illegally, one foot on American soil, say the magic words, and you are here indefinitely. If you fix those things, you remove—and you end catch-and-release.

The last thing that I will say is that right now what we also need to do to remove those incentives, to remove that perception that once you get here you are going to remain indefinitely, is we need to support and increase ICE enforcement and interior enforcement. Right now we have over 1 million individuals who came here, the majority of them, illegally, filed for asylum, and either in absentia or their claim was denied, have received a deportation order of removal—1 million, yet they still remain in this country illegally. If we start an enforcement operation to remove those individuals, you will also make a huge dent on the incentive.

Chairman JOHNSON. I will repeat, we had a hearing on MS-13, unbelievably vicious gang, and that was pretty revealing. But as I said, I think Operation Matador, 40 percent of those people rounded up in that operation, MS-13, came in as unaccompanied children or an unaccompanied child.

Again, I just want to thank all of you. This is exactly what I was kind of hoping this hearing would be. I think we have laid out some realities. I think you have certainly informed this Committee. The next step is to utilize this information to, again, develop—or agree on what is an achievable goal, in particularly the short term, and work on the policy suggestions. Again, I agree with you, Dr. Selee. I think that is the basic, we have to attack that, the way we come to that first conclusion, so if we can do it quickly—and, by the way, if we do that, the number of detention beds we need comes down, the length of time in detention comes down, and we get this all under control. But right now part of the things that offends the American consciousness, because we are an incredibly compassionate Nation, is just these numbers and just kind of what the government is trying to deal with and how they are trying to grapple with it.

Of course, just one news story about a child who dies because they come to this country with a 105-degree fever with a large group and CBP just—you cannot save every life. That offends the American public. But if we can get this under control, we will see far fewer stories of that, and I think it will be better for everyone.

Again, I just want to thank all of you for your testimony. I want to continue to work with you in the future.

The hearing record will remain open for 15 days, until April 19 at 5 p.m., for submission of statements and questions for the record. This hearing is adjourned.

[Whereupon, at 12:02 p.m., the Committee was adjourned.]

A P P E N D I X

"Unprecedented Migration at the U.S. Southern Border: By the Numbers"
Opening Statement of Chairman Ron Johnson
April 4, 2019

As prepared for delivery:

There is a humanitarian and national security crisis at our southern border. In the first six months of this fiscal year, Border Patrol apprehended over 175,000 family unit aliens and over 33,000 unaccompanied children. According to Secretary Nielsen, we are on track to reach one million apprehensions by the end of the year, the first time since the fiscal year 2006. The migrants crossing today—mostly families and unaccompanied children—are likely to remain in the United States for years or even permanently because of laws that make it extremely difficult to detain and remove them even without a valid asylum claim. Conversely, prior to 2011, the vast majority of migrants were single adult males from Mexico who could be removed within days or even hours of crossing the border.

CBP is shifting 750 officers to help care for families. In El Paso, 40 percent of Border Patrol agents are no longer engaged in the border security mission due to the need to care for and process family units and unaccompanied children streaming across our border. This diversion of personnel and resources is being repeated across nearly all sectors on the southern border. As a law enforcement agency, CBP was not designed to care for children but have heroically met this challenge. This is not sustainable.

We are also witnessing a new phenomenon of large migrant groups of 100 migrants or more crossing the border together. In fiscal year 2017, only two such groups were apprehended; in fiscal year 2018: 13. In just the first six months of this fiscal year, the number has skyrocketed to 100. These groups tax Border Patrol resources and allow cartels and other smugglers to exploit the preoccupied agents to smuggle in drugs, criminals, and other contraband undetected. This coupled with the need to shift law enforcement to care for families and large groups is making our border less and less secure.

Last week DHS directed most Border Patrol chiefs on the southwest border to expeditiously process and release all non-criminal crossing family units. It appears that other categories of migrants are not far behind. This is a new sad reality. We now have a virtual open border for any migrant who crosses with a minor, and our border security enforcement has been reduced to a mere speed bump for migrants on their path to long-term occupancy in the United States.

This crisis is not the fault of the dedicated, hardworking men and women of DHS; they have been given an impossible task. The fault rests with Congress alone. I challenge my colleagues to act. Unless you support this new reality of open borders, work with me now to address this crisis.

Today we are holding the first in a series of hearings about the unprecedented crisis at the southern border. The purpose of these hearings is to set out the facts, from which I hope we can begin our work to solve these problems. We welcome Mark Morgan, former Chief of the U.S. Border Patrol; John Daniel Davidson, a Senior Correspondent at The Federalist; and Dr. Andrew Selee, the President of the Migration Policy Institute. I am grateful to the witnesses for being here.

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Unprecedented Migration at the U.S. Southern Border: By the Numbers”
April 4, 2019**

**Senator Gary C. Peters, Ranking Member
*Opening Statement As Prepared for Delivery***

Mr. Chairman, thank you for holding this hearing today. I appreciate your focus on obtaining accurate, timely data on migration and border security. Few issues we face are as complex as this one, or as controversial. Far too often, harmful rhetoric drowns out reasonable dialogue. I hope that this hearing can cut through the rhetoric and focus on the facts.

The situation on our southern border, in Mexico, and throughout the Northern Triangle is dynamic. Our immigration system and infrastructure should reflect that.

The reality is that much of our current infrastructure was built to address the challenges of the 1990’s and early last decade, when the majority of unauthorized border crossings were single men seeking economic opportunity.

That is not what statistics show us today, and it is not what our staff saw during a bipartisan delegation to the southern border last month.

Overwhelmingly, they saw families from El Salvador, Guatemala, and Honduras.

They saw parents with children. They saw children who had made the journey to our border without their parents. And they saw our hardworking law enforcement officers, public servants, volunteers, and civic leaders doing their best to manage a very difficult situation.

Many of these families are fleeing violence and extortion. Homicide rates in the Northern Triangle are some of the highest in the world. Corruption and impunity prevail. Only three out of every **one hundred** homicides lead to a trial and conviction. This breakdown of the rule of law is a clear “push factor” that drives migrants to flee these countries.

Unfortunately, our system has not been able to keep pace with the increase in asylum claims.

Screening interviews are being delayed. The average wait to appear before an immigration court is now over **two years** and the backlog is quickly approaching one million cases. This is unacceptable.

We need to do more to decrease processing times while increasing border security. We absolutely need secure borders, but it will take cooperation and credibility, not chaos and confusion. This administration will need to cooperate with Mexico – Honduras, Guatemala, El Salvador, and international organizations to take on cartels and corruption. They will also need to cooperate with Congress and build credibility.

Unfortunately, this administration has provided too much chaos and confusion, and too little credibility. It has been one step forward and two steps back.

DOJ approved a plan to reduce immigration court backlogs only to see backlogs grow as a result of an unnecessary government shutdown.

We passed a bipartisan deal to make meaningful investments in security for both our northern and southern border, only to see the President unilaterally declare a national emergency to circumvent Congress and potentially pull away funds from important military construction projects.

In February, the Department of Homeland Security announced a Memorandum of Cooperation with the Northern Triangle nations to combat human trafficking and organized crime, only to see the President cut off existing funding to these countries just five weeks later.

Chaos is not a strategy. We need bipartisan cooperation at home and effective American leadership projected abroad.

This is still possible. Just yesterday, I introduced bipartisan legislation with Senator Cornyn from Texas to address staffing shortages at our ports of entry across our nation, northern and southern border alike.

This is especially important now as DHS is potentially moving upwards of 2,000 Customs and Border Protection officers to the southern border.

I believe this legislation is an important first step we can take to reduce the strain on our southern border and improve the facilitation of trade, travel, and commerce across the United States, but there is clearly much more to do.

Thank you, and I look forward to today's discussion.

TESTIMONY OF

Mark Morgan

BEFORE

U.S. SENATE
Committee on Homeland Security and Governmental Affairs

ON

“Unprecedented Migration at the U.S. Southern Border: By the Numbers”

April 4, 2019
Washington, DC

Chairman Johnson, Ranking member Peters, and Members of the Committee, it is a privilege to appear before you today.

I enthusiastically agreed to appear before you when I was asked because I truly believe our country is at a critical crossroads. With more than 30 years of public service – as a veteran of the United States Marine Corps; police officer with the Los Angeles Police Department; two decades as a Special Agent with the Federal Bureau of Investigation; and Chief of the U.S. Border Patrol, I am extremely concerned about the growing risks to our nation's public safety, national security, and rule of law, due to illegal and uncontrolled immigration. The crisis extends well beyond a single border – from Central America, through Mexico, to our southern border, and throughout every major metropolitan city in the United States.

The historical data, current factual-based information, and intelligence clearly outlines the very real border threat and humanitarian crisis we face at our southwest border. The changing trends in illegal crossings and exploitation of our laws have overwhelmed our resources and personnel. We are experiencing a crisis to the magnitude never experienced in modern times. The solution to this extremely complex crisis, cannot be a partisan issue. Simply put – continued inaction through uncompromising positions will only serve to exacerbate the threat. There is an acute need for legislative action.

As the immigration debate has continued, we have seen the political discourse in this country steadily decline. The divisive rhetoric, often directed at the men and women of law enforcement, may serve some political purpose, but its demoralizing for the personnel being attacked. I've seen the use of social media to mischaracterize again and again, the actions of law enforcement personnel to further a political talking point. This type of misinformed and generalized rhetoric is beneath any Congressional member and only serves to further divide the country on the immigration debate. The overwhelming majority of border security personnel do what they do out of a sense of duty – to the nation, its laws and citizens. They don't get fulfillment from their government paycheck but rather from a sense of being a part of something greater than one's self. I'm respectfully requesting as we continue this debate, we all pause, and remember – words matter. They have greater meaning and impact when the words come from our elected members of Congress – with this power comes immense responsibility.

Perspectives of past and present government officials:

Let's consider some perspectives from government officials, past and present, who have worked for administrations from both sides of the political aisle to help shape the understanding of the current crisis along the southwest border.

"Illegal and uncontrolled migration, however, poses a serious and growing risk to U.S. public safety, national security, and the rule of law. This cannot be a partisan issue. Every secretary of this Department has sounded the alarm about our unsecured border and highlighted the associated threats and consequences to our national security. Today we are seeing the results of a failure to act and a broken system."

"Our nation is facing a dire humanitarian and security crisis at our southern border."

Secretary Kirstjen Nielsen, U.S. Department of Homeland Security
U.S. House, Committee on Homeland Security, March 6, 2019

"I have heard a number of commentators observe that even with these alarming levels of migration. The numbers are lower than the historical peaks, and as a result, they suggest what we are seeing at the border today is not a crisis. I fundamentally disagree. From the experience of our agents and officers on the ground, it is indeed both a border security and humanitarian crisis. What many looking at total numbers fail to understand is the difference in what is happening now in terms of who is crossing, the risks that they are facing, and the consequences for our system."

Commissioner Kevin K. McAleenan, Customs and Border Protection
U.S. Senate Committee on the Judiciary, March 6, 2019

"What the men and women of CPB are seeing every day at and between our ports of entry as nothing short of a border security and humanitarian crisis."

"The current crisis at our southwest border requires us to increase our capacity to process and facilitate appropriate treatment for the aliens we encounter. This redirection of our resources comes at a cost, as it decreases the number of agents available to perform our law enforcement mission and increases risks along the border. The rise in migration is, in part, a consequence of the gaps created by layers of laws, judicial rulings, and policies related to the treatment of minors. However well-intentioned, they hinder CBP's ability to fulfill its mission"

"We must invest in border security, including a modern border wall system. Since the first barriers were constructed in San Diego Sector in 1991, U.S. Border filed commanders have continued to advocate for border wall because of the enduring capability it creates to impede and/or deny attempted illegal entries and because it gives us additional time to carry out successful law enforcement resolutions."

Chief Carla Provost, U.S. Border Patrol
U.S. House, Committee on the Judiciary, February 26, 2019

"In my 34 years of enforcing immigration laws I have never seen this level of crisis on the border. I have seen illegal entry numbers around the same and a little higher a couple decades ago, but not this level of asylum fraud and the illegal entry of people that cannot be easily removed because of the loopholes in our laws. This current crisis puts those most vulnerable in the hands of criminal organizations which will result in more border deaths, more rapes and more humanitarian abuses. The loopholes in our laws are causing this most recent surge and until Congress makes needed changes, our border will never be under control, we will never know who enters this country undetected because of this crisis, and more people will die. This just isn't about enforcing our laws and protecting our nation and its sovereignty, it's about saving lives. How many more people have to die before we stop ignoring the problem and enticing the most vulnerable to take these risks. For the past three decades Congress has failed to secure our border. It is now time for Congress to work with this President and do their job. FIX IT"

ICE Director Tom Homan, Immigration and Customs Enforcement
March 2019

"During this Fiscal Year 2019 through February, USBP has apprehended 268,044 individuals, that is a 97% increase as compared to the same timeframe last Fiscal Year. Make no mistake, these levels constitute a humanitarian and border security crisis and I will explain why"

Chief Brian Hastings, U.S. Border Patrol Law Enforcement Operations
Press Conference, Ronald Reagan Building, March 5th, 2019

"By anyone's definition, by any measure, right now we have a crisis at our southern border"

"By far greater numbers than anything I saw on my watch in my three years as Secretary of DHS."

"There is always more we can do for border security. More surveillance, more roads, more planes, more barriers.....where it makes sense."

Former Secretary Jeh Johnson, U.S. Department of Homeland Security
Television Interview, March 30th, 2019

Why the current crisis we face along the southwest border is greater than anything in modern history: Change in demographics and their consequences

In 2016, as Chief of the U.S. Border Patrol, I had a front row seat for the impact of the "catch and release" policy which effectively mandated border enforcement agencies release unaccompanied minors and family units, into the interior of the United States, notwithstanding they had illegally entered our country.

What began in 2014 as phenomenon of an influx of families and children from the northern triangle countries has exponentially grown resulting in a drastic shift in the demographics of those illegally entering the U.S. The number of Central America migrants exceeded the number of Mexican migrants in four of the past five years, reaching 75% of the crossings this fiscal year.

The increases and demographic changes in illegal crossings are direct responses to our broken legal frame work being exploited by the cartels and migrants. The loopholes in our asylum laws; nonsensical judicial precedent; overwhelmed immigration processes; and lack of detention space, have helped drive what has devolved essentially into an open border policy. Central American families are incentivized and rewarded to come and illegally enter our border because they know DHS must release them within 20 days by law and they will be allowed to remain in the U.S. indefinitely while awaiting immigration court proceedings. It's simple – they step one foot on American soil, say the magic words under "credible fear" and within a few days they're allowed into cities all across the U.S. What should sound additional alarms of concern is that most of the family members either lack proper identifying documentation or effective vetting of what they produce is impossible, so we know virtually nothing about who we're letting in! Once in, they are typically never to be heard from again.

What is happening is counter-intuitive to the rule of law and defies the basic principles of sovereignty. Although more than 80% meet the initial credible fear claim, because the threshold is non-existent, only 15% are found to have valid asylum claims which debunks the uniformed outrage often used in talking points that migrants from Northern Triangle countries are fleeing from extreme violence or persecution. It's not complicated – they are being pulled here for two reasons: economic equality and family reunification. Neither are valid claims under the asylum process. Nevertheless, we continue to facilitate an abuse of our laws and the generosity of our country. There are more than 1,000,000 illegal immigrants in the U.S. who refuse to comply with deportation orders of removal.

There is another false narrative which continues to gain steam. It goes like this: "but the numbers of illegal immigrants are way down so it's not a crisis." Any student who has taken a basic statistics course knows you can manipulate raw numbers to support just about any position on either side of the aisle. It's essential to look at the context behind the numbers to evaluate their true meaning. In the late 1990s and early 2000s there were more than 1.5 million apprehensions

at the border. The key factor is the overwhelming majority were Mexican adults, of which 90% were deported, often within hours of being apprehended. Additionally, 1/3 of those apprehended were repeat offenders so the realistic number of migrant apprehensions was well below what's reflected.

It's anticipated CBP will apprehend 1 million migrants attempting to illegally enter our borders this year. So, using numbers alone, without any further contextual analysis, we're experiencing an increase we haven't seen in almost two decades – back when there was a bipartisan acknowledgment the numbers themselves demonstrated a crisis.

However, with the changing demographics context is a game-changer. It's not just about the total numbers. Currently 60%-65% of those illegally entering today are families or minors. We know because of our broken immigration laws and system, they will be released into the interior of the U.S. Therefore, as the apprehensions reach one million this year, the unconscionable result will be the release of 650,000 immigrants into the U.S. That is more than the entire population of Wyoming. Contrast that with the late 1990s, when we experienced 1 million apprehensions, yet we removed the overwhelming majority of those who crossed.

"What's different about the current migration flow is not just how many people are coming but who is arriving. For most of recent history, the majority of individuals arriving illegally or without documentation were single adults, who we could quickly detain and remove. This is how the immigration system is supposed to work. However, in recent years we have seen the proportion of vulnerable populations – children and families – skyrocket. Because of outdated laws and misguided court decisions, we are often forced to release these groups into the interior of the United States and we have virtually no hope of removing them."

Secretary Kirstjen Nielsen, U.S. Department of Homeland Security
U.S. House, Committee on Homeland Security, March 6, 2019

A thorough historical analysis clearly shows we are experiencing a crisis greater than we have in recent times. The changing demographics has overwhelmed our law enforcement resources, as well as, non-profit and faith-based organizations. The entire immigration system is overrun. They're not at the breaking point, they're pasted it. Border Patrol resources are being pulled off the front lines to address the unprecedented humanitarian crisis while the Cartels further exploit our open borders, increasing the threat to our country.

It's time to stop listening to those driven by a personal political ideology and arm yourself with facts, thorough analysis, and the perspective of credible experts.

A March 5th, 2019 press conference provided by Commissioner Kevin McAleenan and Chief Brian Hastings, Border Patrol Operations, further illustrated the consequences related to the changing demographics; current statistical trends; impact on resources; and solutions:

"Chief Hastings: Primarily, 28 days in February we had over 66,000 apprehensions. During this Fiscal Year so far to date, since October, we've had over 268,000 apprehensions so far as compared to the same time frame last Fiscal Year. That's a 97 percent increase. So a lot of folks look at that and they say - frankly based upon those numbers we have seen numbers like that in the past. In fact, if you look back to 2005, we've seen numbers like 1.5 million and so a lot of folks don't understand this significant change in the demographics of what we're seeing today. It's what presents us and our partners with a lot of challenges.

Historically, U.S. Border Patrol has arrested 70 to 90 percent Mexican nationals. We can apply a consequence to that demographic. We could return them quickly to Mexico. Today, 70 percent of all those we're arresting are from the Northern Triangle – Guatemala, El Salvador, and Honduras. October 2018 marked the first time in our history that family units exceeded single adult apprehensions. And in February of 2019, family units and unaccompanied children accounted for 65 percent of all Border Patrol apprehensions. For the Fiscal Year, it's 60 percent family unit apprehensions - family unit and unaccompanied juveniles.

So, without a consequence, without being able to deliver a consequence to these individuals for illegally crossing our borders, the Border Patrol has no reason to expect that this trend will decrease. In fact, we believe it will increase. It's well known at this time that adults with children will not be detained during the immigration proceedings for illegal entry. The word of mouth and social media quickly gets back to those in the Northern Triangle countries that if you bring a child, you'll be successful. From April 2018 through February of 2019, we've had almost 2,400 fraudulent claims of families. Of those fraudulent claims, some are folks who have claimed that they're under 18 and are not. Others have actually been fraudulent familial claims.

Another trend that we're seeing - and I mentioned earlier - are the large groups. This is a dangerous trend for us. We define large group as a group of over 100. So far this Fiscal Year, we've seen 70 of those groups of over 100. They've totaled over 12,000 apprehensions. And the important thing to note is if you look back historically, last Fiscal Year we had 13 of those groups over 100. The year before that, two groups over 100 for that Fiscal Year of 17. So that's 99 percent of all of those individuals are family units again and they are from again the northern triangle.

If the current trend continues, Border Patrol can expect to apprehend approximately 174 large groups totaling over 29,000 deportable aliens. Now the issue with this and the concern with this that we have are the majority these groups are entering in places that are very rugged, very remote, specifically talking to areas – Ajo, Arizona, Lordsburg, New Mexico. Very remote, very rugged. The issue that that causes us, the challenge that causes us, is are the furthest areas from our central processing centers, the furthest areas from medical services, furthest from our transportation services that we have, as well. Even more troubling for us is that the current intelligence is telling us and we're seeing firsthand the drug trafficking organizations are utilizing these groups as cover and diversion to divert our agents away from the security national security border mission and use them as a diversion to cross drug loads. We've had four specific cases here recently that we've seen those family units being used as a diversionary tactic. That's highly concerning for us going forward.

So, lastly I just want to hit on some of the resourcing issues that all of this causes for U.S. Border Patrol CBP. We're devoting a large amount of our daily resources to this. The facilities and the manpower cannot support the continued increase in the apprehensions of family units and unaccompanied children. Our Border Patrol stations were built in the 80s and 90s. They were built for a different demographic, not for the current amount of family units and UACs that we're seeing.

In each day each and every day, Border Patrol is putting approximately 25 to 40 percent of our manpower is being dedicated to the care, transportation, and the humanitarian mission they're pulled from the national security mission to do these things. We're committed to addressing these humanitarian needs. The current situation is unsustainable for Border Patrol operations with this. The increased flow combined with the stress of the journey the crowded conveyances and flu season has resulted in significant increases for the medical referrals for Border Patrol.

Currently, U.S. Border Patrol is sending an average of 55 people per day for medical care. During December, this was as high as 63. We're on track to refer approximately 31,000 individuals for medical treatment this year as compared to 12,000 last Fiscal Year. Since December 22nd, 2018, U.S. Border Patrol agents have spent over 57,000 hours at a hospital or medical facility. This equates to just under 5,700 shifts of hospital watch during the 72 days at a cost of \$2.2 million in Border Patrol salary. Between 2014 and 2018, med part data has shown that we have spent 98 million dollars on medical services for individuals in CBP custody.

That's a quick background of what we have going on operationally. I'm proud of the professionalism, compassion our agents have shown confronting this border security and humanitarian crisis. And with that, I'd like to turn it over to the Commissioner McAleenan to speak more about the ongoing actions.

Commissioner McAleenan: It should be very clear from these numbers that we are facing alarming trends in the rising volumes of people illegally crossing our Southwest Border or arriving in our ports of entry without documents. This increased flow presents - currently at our highest levels in over a decade - both a border security and humanitarian crisis, challenges our resources and personnel, and is negatively impacting border security. While Chief Hastings focused on the significant numbers of illegal crossings between ports of entry, where 87 percent of the total flow in February came, we're also seeing stark increases in asylum seekers as we work to provide lawful and safe access at our Southwest Border ports of entry.

In Fiscal Year 2018, we saw a 120 percent increase over Fiscal Year 17, with 38,000 claims at Southwest border ports of entry. So far this Fiscal Year, we've seen a 90 percent increase over those record levels in Fiscal Year 18 and fully 60 percent of an inadmissible persons at our Southwest Border ports of entry are making claims of fear of return to their home country.

Taken together, these numbers are remarkable. 76,000 total apprehensions of inadmissible arrivals in a four week month in February. That's the highest number of encounters in any February in the last 12 years. Within that number, I just want to underscore, in 28 days, we had 40,385 encounters with family units and 7,250 encounters with unaccompanied children.

That means we have apprehended and encountered more families in just five months and five days than last year's record total. Not only are the numbers increasing, the percentage of people from countries in the Northern Triangle of Central America has increased as well. Now 70 percent of all crossings are from these countries and a full 62 percent of all crossings and encounters are vulnerable families and children.

November of this Fiscal Year marked the first time that any other country exceeded the numbers of Mexican nationals apprehended and encountered by CBP. Guatemalans and Hondurans are both crossing now in larger numbers than Mexican nationals. These numbers are significant, as chief Hastings explained, because unlike historical crossings, which are comprised of a large majority of single adult males from Mexico who could be repatriated quickly, families and children from Central America require increased care and processing, and are released into United States pending adjudication of their immigration claims.

Within these numbers, we are confronting challenging new smuggling cycles, patterns, and methods. So-called caravans, where 500 or more migrants form groups in Central America, mostly in Honduras, and traveled together through Mexico to our Southwest Border. Separately, we see a new phenomenon, highlighted on the screen, of large groups of mostly family units from Guatemala who are traveling on buses through Mexico to the U.S. border in much shorter smuggling cycles, making the journey in as little as four to seven days and on a very consistent basis.

So far this year, as Chief Hastings alluded to, we've seen more than 70 instances of groups over 100. In one case, agents encountered a group of 334 migrants. Smugglers are dropping these groups in the most remote areas of our border, including places like Antelope Wells, New Mexico; Ajo, Arizona; and Yuma, Arizona.

The availability of these express bus routes means that more young children are arriving at our border and we are seeing migrants arrive with illnesses and medical conditions in unprecedented numbers. To address these concerns, which were put into stark relief with the tragic deaths of two migrant children in December, CBP has mounted significant new efforts to increase medical checks and care upon arrival at Border Patrol stations or ports of entry.

On December 25th, 2018, I directed CBP to complete secondary medical reviews of all children in Border Patrol custody by either contract medical professionals or a CBP agent and officer trained as an EMT or paramedic. To sustain and formalize this work, on January 28 I issued an interim medical directive developed with advice from medical experts and pediatricians to guide CBP deployment of enhanced medical efforts to mitigate the risk to, and improve our care for, individuals in CBP custody, as a result in these surges of children and families.

Since the directive was signed and with the help of inter-agency partners like the U.S. Coast Guard and Public Health Service, CBP has interviewed 27,000 juveniles and certified medical practitioners have

screened over 12,000 more, transporting an average, as you heard, 55 people to the hospital each day. We're going to make that procedure publicly available today, given the intense interest in our medical efforts on the border. The border patrol's El Paso sector, I want to highlight for a second, because they've experienced these trends and these increases more acutely than any other place along the border, new in this Fiscal Year. That includes El Paso and about 40 miles south, as well as all the way through New Mexico in the boot heel extending toward the west. El Paso sector alone has seen a 434 percent increase in apprehensions this Fiscal Year. The vast majority are family units and unaccompanied children arriving in large groups which challenges their capacity in their facilities.

Facilities housing migrants near El Paso have reached capacity, and gone over capacity, numerous times in this fiscal year {in the first quarter}, a situation that impacts both the efficiency of migrant processing and the quality of our care that we're able to provide for detained migrants. To help address this, we are taking steps to establish a centralized processing center (CPC) in the El Paso sector. This will help us protect the health and safety of families and children in custody, while streamlining operations and reducing the time that we're holding families and children. The El Paso Central Processing Center will provide one location for the processing of family units and children in an appropriate environment and will facilitate consistent medical assessments in one location.

I want to underscore a key point here. While our enhanced medical efforts and the creation of new facilities will assist with managing the increased flows, and while we'll continue to do all that we can to address these increases in traffic safely and humanely. The fact is that these solutions are temporary and this situation is not sustainable. Remote locations of the United States border are not safe places to cross and they are not places to seek medical care.

The system is well beyond capacity and remains at a breaking point. Based on the experiences of men and women on the front line, this is clearly both a border security and humanitarian crisis, and we know what is driving these trends. These increases in traffic are a direct response from smugglers and migrants to the vulnerabilities in our legal system. These weaknesses in our immigration laws and accumulated court rulings now represent the most significant factors impacting border security and causing this humanitarian crisis.

These include, first and foremost, the inability to keep families together while they complete expeditious and fair immigration proceedings. Instead, crossing with a child is a guarantee of a speedy release and an indefinite stay in the United States. The asylum gap, where approximately 80 percent of individuals meet the initial credible fear bar and the asylum process, while only 10 to 20 percent of Central Americans are found to have valid asylum claims at the end of their immigration court proceedings. And the disparate treatment under the Trafficking Victims Protection Reauthorization Act, which allows for children arriving from Mexico and Canada - contiguous countries - to be repatriated, but not children from other countries including those in Central America, regardless of the position of those governments.

No one knows these vulnerabilities better than transnational criminal organizations who are continually working to exploit vulnerable people in the Northern Triangle and the weaknesses in our system. The message from the smuggling organizations to parents in Guatemala, Honduras, and El Salvador is clear: If you bring a child, you will gain entry to the United States and you will be allowed to stay.

There are solutions to this crisis. We need to continue to support the governments in Central America to improve economic opportunities to address poverty and hunger and to improve governance and security. The administration announced \$5.8 billion in aid and investment commitments in December. We must work with the new administration in Mexico on addressing the transnational criminal organizations that prey on migrants and incentivize this traffic. We must invest in border security, including a modern border barrier system, additional agents and officers, technology to screen vehicles, and air and marine support. And we will put the investments in the Fiscal Year 19 appropriations bill to good use.

But we also face an acute need for legislative action to address the gaps in the legal framework, given the challenges I outlined here today. Every single day, smugglers and traffickers profit from human misery by exploiting people who are seeking a better life. Through human smuggling, transnational criminal organizations have established a new multi-billion dollar line of business. The situation is not safe for migrants. It challenges our ability to provide humanitarian care. It contributes to dangerous conditions on our border and enables smuggling, while enriching criminals. Regardless of anyone's preferred policy

outcome, the status quo is unacceptable. It presents an urgent and increasing crisis that needs to be addressed.”

Transnational Criminal Organizations – gangs and drugs:

While the Border Patrol is diverting 40 percent of their personnel away from their national security mission and redirecting resources to provide care, transportation, and related humanitarian functions, the transnational organizations are expanding their continued exploitation of the resulting increased gaps on our border and weaknesses in our system. Simply put – more drugs and criminal aliens are illegally crossing into the U.S., putting American citizens at increased risk, as agents are consumed with caring for families and children. In 2016, as Chief, I sounded the alarm when I estimated 15 percent of agents were being diverted from the front lines along the southwest border for what I referred to as “child care” related activities. I warned Congress then, if the crisis wasn’t addressed – through removing the incentives – we would continue to see the humanitarian crisis worsen. It has done just that.

The human smuggling operations of the transnational organizations doesn’t just facilitate the entry of those seeking a better life – there is a very real criminal element taking advantage of the crisis and the weakness in our ability to effectively secure our border. As the border security agencies become increasing overrun, the gap widens, and the exploitation continues to soar to epic levels. These organizations are profiting every day while exploiting a vulnerable population and putting them at risk, along with American citizens. The victimization doesn’t end when their journey into the U.S. is complete. Nor does the criminal activity of those criminal aliens making their way into the country. Many of those seeking improved economic equality and family reunification continue to be preyed upon and victimized long after they’ve made their way into the U.S. As each day goes by, while we ignore the expert’s pleas concerning the crisis and what needs to be done to “fix” it, more vulnerable people are exploited and put at risk. And we continue to add to the preventable death statistics as the result of our broken immigration system.

As an example, last week, three MS-13 members who were arrested in Maryland for stabbing a rival gangster and burning the body were resettled basically as refugees under the false pretenses of being brought to this country as “unaccompanied minors.” Unfortunately, this isn’t an isolated example. Long Island and Maryland became hot spots for MS-13 activity during the surge of Central American teens in 2014. The number of teens coming in now, both individually and with families, dwarfs the 2014 numbers. The MS-13 is one of the most violent and prolific transnational gangs the U.S. as ever seen and the influx of minors into the country through the current crisis will provide them with unlimited vulnerable prospects. While Border Patrol is tied up with the humanitarian mission, the smugglers business is thriving. According to Border Patrol, 800 gang members were apprehended so far this year, a 50 percent increase from last year. Imagine what they’re not catching.

As a police officer working in South Central Los Angeles, and years later, as an FBI supervisor of an MS-13 Gang Task Force, I saw firsthand the transition of countless young kids into the world of gang membership. The reasons why are varied but have remained consistent: status, recognition, protection, intimidation, brotherhood, and profit through criminal activity. The young immigrant population is increasingly susceptible and vulnerable to all the pull factors and

drivers. They are often uneducated, unskilled, and lack a sense of belonging and purpose. This makes them a perfect target for gang recruitment.”

“Many of the gang members ICE has arrested the past few years entered the US at the southern border as part of a family unit or as an unaccompanied alien child UAC. As a matter of fact, a gang operation in NY last year entitled Operation Matador, which targeted MS-13 gang members, showed that approximately 40 percent of those arrested illegally entered the U.S. as part of a family unit or as a UAC. Many that entered the U.S. were already gang members or soon became gang members after arriving in the U.S.”

ICE Director Tom Homan, Immigration and Customs Enforcement
March 2019

As chief of the Border Patrol, I toured the detention facilities filled to capacity with unaccompanied minors, 17 years of age or younger, who had illegally entered the country. Alone, without any parents or guardians. As I looked on, I saw both hardened young men as well as vulnerable and lost youth. With every encounter, I walked away wondering how many would be lured into joining a gang. The odds were not in their favor, as they were released into a city somewhere in the U.S., never to be heard from again.

The ability to interdict and seize illegal narcotics is being negatively impacted as well - another cause and effect of the unprecedented humanitarian crisis. It's common sense – shut down interior check-points and divert 40 percent of your resources away from enforcement action – we shouldn't be surprised the smugglers are exploiting the wide-open border.

A recent operation led by the DEA resulted in 64 pounds of methamphetamine being seized from a downtown luxury residence in Minneapolis – one of the suspects is believed to have direct ties to a Mexican cartel. The charges allege the crimes occurred between Feb. 1, 2016, and April 19, 2018. The drugs were smuggled into the United States from Colombia and Mexico. Heroin and cocaine were then distributed through Houston to Atlanta, Ga.; Buffalo and New York, N.Y.; Miami, Fla.; New Orleans, La.; and Norfolk, Va.

This three-year long investigation illustrates, once again, every city in the U.S. is a “border city” and a potential victim of the transnational criminal organization’s exploitation of our southern border.

“people are dying all over the country and families are being destroyed at levels we have never seen from massive illegal drug distribution by the nasty, violent and greedy Mexican cartels. The US must focus on what’s really happening at our borders and enhance the security by building a wall and focusing the critical resources at the POE’s with the greatest technology to detect and seize the poison coming into America.”

Special Agent, Derek S. Maltz, Drug Enforcement Agency
March 2019

Why should we be so concerned with any negative impact to the ability of our border security entities to effectively detect and interdict illegal narcotics and synthetic drugs?

- 1 kg of fentanyl can kill 500,000 people, making this a national security crisis and health crisis.
- 1 kg costs about 5000 in China but the cartels can make up to \$2 million or more from 1 kg of fentanyl.
- The overdose rates in America are unprecedented and will continue to rise due to the purity of the fentanyl coming into America from China and Mexico

- 198 Americans per day died in 2017 from drug overdoses. Every 8 minutes a death
- 134 per day died from opioids. Every 11 minutes
- If you add up all the people who died on September 11, 2001, the Afghan war and the Iraqi war that only represents about 13.5% of the 72,000 who died from drugs last year
- The Mexican cartels are mixing fentanyl into their products to save money and reduce the production logistics
- The Mexican cartels are getting most of the synthetic fentanyl that's killing Americans at an alarming rate from China along with other types of synthetic drugs and precursor chemicals for the production of methamphetamine
- The users are so addicted after starting with Opioid pills that they are now turning to cheaper drugs on the street like heroin, which sadly is now mixed with very potent fentanyl – blamed for an increasing amount of deaths across the country
- The current overdose statistics are very misleading because the drug "Narcan" is saving so many lives by the first responders

Comprehensive Solutions to fix our broken immigration system:

There is no single solution which will address the multi-dimensional challenges facing our broken immigration system. The dual crisis along our southwest border - national security and humanitarian - requires innovation and a willingness to address the actual root causes. Although not mutually exclusive, the issues require, to some degree, a different set of actions and solutions.

We need congress to pass new legislation to fix outdated laws and gaps in DHS authorities; we need to continue to work with governments in Central America to improve economic opportunities; we need to continue to work with the Mexican government to eradicate the transnational criminal organizations, as well as, drive them to be effective partners in addressing the humanitarian crisis; we must continue to invest in border security, including additional infrastructure (physical barrier/wall), technology, personnel, and air and marine support – where it make sense; and increased support for appropriate interior enforcement action.

However, we must confront the reality that we have been doing some of these actions for decades with differing degrees of success. The control transnational criminal organizations retain over the southwest border remains strong and profitable. Regardless of our continuous attempts to improve the conditions in the Northern Triangles countries, the steady increase of illegal immigration, specifically families and unaccompanied minors, since 2014 unequivocally shows these attempts have had little if any impact. We can't keep doing the same thing – throwing money at the issue – and expecting a different outcome. We need to change our approach when dealing with governments of Central America and Mexico.

History has shown us, we can't overly rely on our external partner countries to fix *our* immigration crisis. Therefore, we must also confront our broken legal framework if we are to achieve lasting and effective border security. For example: we have to come-up with legislative answers to the *Flores* settlement agreement and subsequent court interpretations of its intent which has impeded the U.S. government's ability to maintain custody of families and minors.

"Legislation on this issue should be focused on allowing us to keep families together during their immigration proceedings and promoting a uniform standard of care and accommodation for minors in custody, while ensuring our laws are enforced."

Secretary Kirstjen Nielsen, U.S. Department of Homeland Security
U.S. House, Committee on Homeland Security, March 6, 2019

We must also reengineer our laws to ensure all minor children who are not victims of trafficking or persecution are returned home and reunited with their families – regardless of their country of origin. Currently the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) treats children differently depending on whether they are a resident of a contiguous or non-contiguous country. There is no rational explanation to treat children different based upon their country of origin rather than an articulable and reasonable threat.

The Flores settlement agreement and TVPRA, along with a ridiculously low burden of proof for the initial credible fear claim, drives our current “catch and release” policy. Make no mistake – bring a minor child with you, step one foot on America soil, and you will be allowed into the U.S., to remain indefinitely. There is no greater incentive and “pull” factor than this.

We also need Congressional assistance to update laws that allow criminal aliens to circumvent the removal process. Right now, the system is broken, and because of a series of misguided court decisions, DHS is forced to release dangerous criminal aliens from custody and is unable to remove others from the United States even when they have been convicted of serious criminal offenses. Specifically, we must clarify the definition of “conviction” in the *Immigration and Nationality Act* to address aliens who receive post-conviction relief or sentence modifications for the purpose of flouting immigration consequences. In addition, we must remedy U.S. Courts of Appeals and U.S. Supreme Court decisions, including *Mathis v. United States*, 136 S. Ct. 2243 (2016), that have made it increasingly difficult for ICE to remove convicted aliens on criminal grounds of removal.

We must also urgently close loopholes created by the U.S. Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). This decision generally requires that DHS release a criminal alien ordered removed who has been detained for 180 days after the period for removal began unless DHS can show that there is a significant likelihood that removal can be effectuated in the reasonably foreseeable future. The result is that we have been forced to release dangerous individuals – including those responsible for terrible crimes – back into the population. We must close loopholes created by the *Zadvydas* decision to give DHS authority to keep dangerous criminal aliens who are subject to final orders of removal off our streets and keep our communities safe. Finally, for the safety and security of the American people, Congress should ensure that DHS has full authority to detain and remove alien criminal gang members, alien gang associates, and aliens who participate in gang-related activities. We must be able to safeguard Americans, from aliens associated with criminal gangs, including detaining and removing violent gang members such as MS-13.

Secretary Kirstjen Nielsen, U.S. Department of Homeland Security
U.S. House, Committee on Homeland Security, March 6, 2019

However, while we’re engaging in the recommended solutions outlined above, we must also take immediate action to address what’s happening at the border now. The Border Patrol, due to the system being completely overwhelmed, are forced to release families themselves directly into the U.S. They have reached their breaking point and it’s anticipated to worsen. We must immediately enact a strategy to effectively reduce the “pull” factor. If not, there is nothing to de-incentivize them from coming.

Recommend a border-wide implementation of the Migrant Protection Protocols (MPP).

The MPP are a U.S. Government action whereby certain foreign individuals entering or seeking admission to the U.S. from Mexico – illegally or without proper documentation – may be returned to Mexico and wait outside of the U.S. for the duration of their immigration proceedings, where Mexico will provide them with all appropriate humanitarian protections for the duration of their stay.

Section 235 of the Immigration and Nationality Act (INA) addresses the inspection of aliens seeking to be admitted into the U.S. and provides specific procedures regarding the treatment of those not clearly entitled to admission, including those who apply for asylum. Section 235(b)(2)(C) provides that “in the case of an alien...who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the U.S.,” the Secretary of Homeland Security “may return the alien to the territory pending a [removal] proceeding under § 240” of the INA.” The U.S. has notified the Government of Mexico that it is implementing these procedures under U.S. law.

Additionally, increase ICE funding for the expansion of detention bed space and support for prioritized and targeted interior enforcement action. Their ability to address the one million immigrants who have received a deportation order of removal but have refused to comply and remain in the U.S. illegally, is an essential element to reduce the continuing “pull” factor. Reversing the current reality – arrive with a child and you’ll get in – is the bold action required to address the crisis. The status quo has proven to be a complete failure.

It's time to acknowledge the crisis:

I want to leave every member of this committee with why I believe we must set aside our political ideology and “fix” this crisis. Today, right here and right now, we need to stop attacking each other and start attacking the crisis. We must acknowledge the facts, intelligence, historical data – and listen to the border security experts. This year more than one million immigrants will be apprehended at our southern border, most coming across illegally. I believe it’s worth mentioning again the perspective of the former Secretary of DHS, Jeh Johnson, “By anyone’s definition, by any measure, right now we have a crisis at our southern border”

In an effort to have honest dialogue, we must acknowledge the real life ramifications directly related to the risks we face, as a nation, due to illegal and uncontrolled immigration. The below statement is from a father, Don Rosenburg, whose son, Drew Rosenburg, was killed in 2010 in California. His words are raw, emotional, and hard hitting – as you would expect from a father who lost his 25 year son. A death which didn’t have to happen. This is real – this happened – it could have been prevented.

“My son was one of approximately 4,000 people killed by illegal aliens in 2010. Allowing anyone to enter this country and be set free awaiting a ‘hearing’ is not just irresponsible, but one degree less than treason. Congress’s inaction doesn’t define a national emergency. The deaths every day at the hands of illegal aliens does. My son had dreams as well. You turned them into my family’s nightmares.”

For me, Drew’s story, along with all the other Angel Families – serves as a reminder – as it should for all of us – how we have failed. For a very long time, we have failed to do what is

required to repair our broken immigration system. Our collective failure has resulted in the pain, suffering, and irreputable harm of unfathomable numbers of people.

Last month, Bambi Larson, a 59 year old woman was stalked and brutally stabbed to death in her own home in California by an illegal alien. The suspect had not only been deported previously but had been arrested six times for criminal offenses in two separate counties in California. The suspect had been repeatedly released from jail despite an active detainer request by ICE.

How many more Angel Families must be created before we say it's time we join together on a bipartisan front to ensure we do everything we possibly can to address this very real threat to our citizens.

To be clear – the threat isn't just to American citizens. I recall in 2016 every leader within DHS who had a role in the humanitarian crisis consistently beat the drum concerning the dangers associated with making the long journey from Central America to the U.S. Congress has been briefed countless times and provided with facts and data clearly painting the picture that the desire for a better life outweighs any risk of harm, including death. It has become an acceptable risk. The incentives are too powerful – they know if they make it to our borders, we're going to allow them in, where they can remain indefinitely. Our failure to address and remove these incentives creates a "pull" factor so strong, immigrants are willing to risk their lives.

A Dangerous Journey: Department of Homeland Security (DHS) leadership and I have repeatedly emphasized the dangers posed by the journey from Central America to the United States, including unscrupulous human smugglers; dangerously overcrowded trains, buses, and other transport; and harsh environmental conditions. Every year, Border Patrol agents save thousands of people who are overcome by the conditions on their journey, including people found suffering from dehydration, heat stroke, starvation, or hypothermia. Our agents have saved people who were drowning in rivers, who were gravely injured, and those who were left for dead by smugglers. In total, Border Patrol agents rescued 4,311 individuals in FY 2018, and have rescued 861 individuals in the first four months of FY 2019. Desperate migrants pay unscrupulous human smugglers thousands of dollars to aid them on their illegal journey. Every single day, smugglers and traffickers profit from human misery by exploiting people who are seeking a better life. They deceive desperate people about our country's laws, and fuel everything from modern-day slavery to the smuggling of illicit goods. These smugglers, many with ties to transnational criminal organizations, may deprive migrants of food and water, physically assault them, and place them in dangerous travel conditions, such as locking them in tractor-trailers while outside temperatures reach 115 degrees. Still other migrants are trafficked or used as drug mules. Human smugglers have no regard for the health and safety of the migrants who pay them; as a result, many who make the journey become sick, injured, or traumatized. Some even lose their lives. Migrants travel north from countries where poverty and disease are rampant, and their health can be aggravated by the physical toll of the journey. Many individuals we encounter may have never seen a doctor, received immunizations, or lived in sanitary conditions. Close quarters on trains and buses can hasten the spread of communicable diseases. All of these factors leave migrants vulnerable to serious medical complications.

Commissioner Kevin K. McAleenan, Customs and Border Protection
U.S. Senate Committee on the Judiciary, March 6, 2019

What will it take for us to stand united as honest brokers – regardless of your political ideology – and act in the best interest of this country, its citizens, as well as those pursuing a better life. There have been many times in this nation's great history where our leaders have set aside their

personal ambition and/or individual political affiliation and acted out of a sense of need for the greater good.

I believe the best way to begin this hearing is for every member of this committee to acknowledge – we have a crisis at our southern border requiring an immediate resolution.



TEXAS PUBLIC POLICY FOUNDATION

Testimony

April 4, 2019

Border Cities in Crisis

by John Daniel Davidson
Senior Fellow

About this time last year, I visited a migrant respite center in McAllen, Texas, run by Catholic Charities of the Rio Grande Valley, the charitable arm of the Diocese of Brownsville. Sister Norma Pimentel helped establish the center in 2014, at the height of the unaccompanied minor crisis, when Immigration and Customs Enforcement (ICE) was overwhelmed with thousands of children and teenagers turning themselves in to Border Patrol agents.

When I visited last March, the center was receiving between 60 and 120 migrants a day, nearly all of them families from Central America.¹ Here's how it worked. Every afternoon, ICE dropped off migrants at the Greyhound bus station downtown, about a mile from the respite center. Greyhound employees would then call the center to let them know the migrants were there, and the center would send vans to pick them up. Once at the center, the children would be sent to another room for a hot meal while the parents took turns working with center volunteers to get in touch with family members all over the country. The goal was to get them all bus tickets and get them on their way that same day, usually later that evening, because the next day there would be another group of families coming in, and there simply wasn't space for more than a couple dozen people to spend the night there.

It's important to note that this wasn't some gleaming facility. The center occupied one half of a somewhat run-down commercial building, consisting of a large multipurpose room, a bathroom and a shower, a small kitchen and a separate room for a makeshift cafeteria. There was an area in the corner cordoned off for young children to play and a large stack of blue plastic mattresses in the corner. It wasn't designed to be a shelter. Staffed by a dozen or so volunteers daily, the center was a non-stop hive of activity, operating at capacity nearly every day.

In December, the diocese moved the center to a larger location, a former nursing home, about 16,000 square-feet—many times larger than the old respite center. That's because the number of migrants turning up at the bus station skyrocketed. Today, the new respite center is receiving about 800 people a day, sometimes more.² Last Sunday, 1,300 people were dropped off there and at shelters throughout town by ICE³ (Greyhound, overwhelmed by the number of migrants, no longer allows ICE to drop people off at the station)⁴.

McAllen, a city of fewer than 150,000 residents, is now facing the prospect of thousands of migrants discharged from ICE custody, wandering the streets and sleeping in doorways and on park benches—the city's mayor has said as much.⁵ What's more, in February the city ordered Catholic Charities to vacate the former nursing home and find a new location within 90 days, citing complaints from neighbors about constant traffic and strangers wandering nearby streets where children play. By any measure, the situation in McAllen is an emergency.

But that's just one border town in Texas. Something similar is playing out all up and down the U.S.-Mexico border. In El Paso, thousands of migrant families are turning themselves in to Border Patrol every day, overwhelming federal facilities and personnel. In a five-minute stretch one day in late March, Border Patrol apprehended two different groups totaling 400 people.⁶ On the night of President Trump's rally in El Paso in February, a group of 300 turned themselves in to the Santa Teresa Border Patrol station, which sits on an empty stretch of New Mexico scrubland 22 miles west of El Paso. Agents had to move all the ATVs out of the garage just so a hundred or so migrants would have someplace warm to sleep that night.⁷ Since then, things have been getting worse.

Even smaller and relatively remote communities are seeing large groups of migrant families turn themselves in. Recently, a group of nearly 60 was apprehended near the port of entry in Eagle Pass, Texas.⁸ In February, a group of 90 was

continued

apprehended in the tiny town of Quemado, Texas, population 230.⁹ That group included children as young as one year old, as well as a pregnant woman who, upon arrival, went into labor and later gave birth.

As mass numbers of migrants are being released from federal custody along the border, cities further inland have also begun to feel the effects. During the third week of March, about 1,000 migrants arrived in San Antonio after taking buses north from various points in the Rio Grande Valley.¹⁰ Catholic Charities and other non-profit groups are struggling to house and feed these people, and in many cases have appealed to municipal authorities for assistance.

It's important to understand what the reality is on the ground in these places. The migrant shelters now going up in Texas border towns are in most cases makeshift and temporary. The process and logistics are haphazard and fluid. No one is really in control.

Among Migrants Seeking Asylum, An Unmistakable Pattern

If you spend enough time talking to migrants themselves, a pattern begins to emerge. Most of them have similar stories about why they left their home countries, and they report a similar experience of how they made their way through Mexico to the southern U.S. border. A few common characteristics stand out:

- A majority of the "family units" are men traveling with one or more children;
- Many of these men say they have a wife and other children back in their home country and that they intend to secure work in the U.S. and send money back to support them;
- They are headed for all points across the U.S. and have family members or friends in those places. Many of them also have jobs already lined up;
- Nearly all of them say they left their homes because it is dangerous, citing gang violence, threats, extortion, etc. They are all claiming asylum;
- At the same time, many of them will admit that they don't plan to remain in the U.S. permanently and in fact have a set amount of time they plan to live and work here before returning home;
- All of them say they paid a smuggler to secure safe passage to the border (the amount varies from \$2,000 to \$6,000 per person, sometimes more).

Despite the challenges and dangers they face in their home countries, the vast majority of these people are, strictly speaking, economic migrants; very few of them have valid asylum claims. Nevertheless, a wall or a physical barrier will do nothing to stop them from crossing the border. Because they are family units seeking asylum, they are not trying to evade U.S. authorities. In fact, they are seeking Border Patrol agents out in order to turn themselves in.

In El Paso, where the Rio Grande River is shallow and easy to walk across, the limits of a physical barrier are plain to see. All migrants need to do is walk across the river, continue a hundred yards or so through a no-man's land between the river and the border fence, and then follow the fence until they reach one of the gates situated on top of a flood levy system. If you drive through certain areas of downtown El Paso near the levy and fence, you can see migrant groups on the south side walking toward these gates. There, they simply wait for Border Patrol to arrive with vans to pick them up. This is now happening on a daily basis, in broad daylight.

Previously, when these migrants were processed and released by ICE, the adults would be outfitted with an electronic ankle monitor. If they failed to check in at designated times or traveled outside a certain radius where they told ICE they would be staying, immigration authorities would be

notified. The ankle monitors are a major piece of ICE's Intensive Supervision Appearance Program (ISAP), an alternative to detention for those in immigration proceedings.

The problem with the ankle monitors, though, is that many migrants simply cut them off and throw them away once they're released from ICE custody. A former Border Patrol agent who now works with a non-profit group that assists migrants in the Rio Grande Valley, told me that in his experience almost everyone released with an ankle monitor cuts it off at some point and absconds, effectively abandoning their asylum claim.

The Migration Pipeline Is A Vast Money-Making Machine

No discussion of the border crisis is complete without noting that, from the moment Central American migrants cross Mexico's southern border and begin their journey north, the entire process is a massive, multifarious, black-market, money-making machine.

A complex network of smugglers, corrupt local officials, truck drivers, lookouts, loan sharks, and Mexican drug cartels exert absolute control over the migration flows in Mexico and have, over the past decade or so, refined it into a lucrative business enterprise. Although exact figures are unknown, and likely unknowable, any back-of-the-napkin calculation will give you an idea of the amount of money changing hands along the migration pipeline.

For example, Customs and Border Protection Commissioner Kevin McAleenan said last week that the agency was on pace to apprehend more than 100,000 migrants in March.¹¹ Assuming each migrant pays, on average, \$4,000 for safe passage over the border, that's about \$400 million—just for those apprehended crossing illegally in March. When we talk about the migration pipeline through Mexico, we're talking about a smuggling industry worth billions.

Some of the chief beneficiaries of this pipeline are Mexican drug cartels, which exert iron-fisted control over their territory. Cartels generally require every man, woman, and child who pass through their territory on the way to the U.S. border to pay a tax, which is often included in the total fee smugglers quote to Central American families. Without paying this tax, migrants cannot cross the Rio Grande, and in many cases are at risk of being kidnapped or otherwise exploited. One of the reasons the large caravans that formed last year in Central America arrived at the border in Tijuana, and not in the Gulf region near the Rio Grande Valley, is because they had not paid off cartels in the Gulf region. For those without resources to pay this tax, traveling in a large caravan—and avoiding cartel-controlled territory—is the only way they can make the journey north with any modicum of safety.

The amount of money cartels are now making off migrant smuggling is substantial. For example, 162,000 people were apprehended in the Rio Grande Valley sector in FY2018. Assuming that each of these people paid an \$800 tax—a conservative estimate—that means the cartels and cartel factions in this region made nearly \$130 million just off taxing people moving through their territory. For context, consider that funding for the Merida initiative, which is aimed at combating these cartels, is \$145 million for the current fiscal year.¹²

The black market for migration is remarkably sophisticated. At its inception point, in villages and towns across Central America, the market works mostly through word of mouth. If you want to migrate, you get hold of someone whose family member or neighbor migrated, and they put you in touch with a local smuggler who will quote you a price or sometimes a range of prices contingent on certain conditions. For example, one Honduran man was quoted a price of \$7,000 on the condition he bring his 6-year-old daughter with him and they agree to surrender to Border Patrol once they cross into the U.S. Otherwise, the price would be \$10,000.¹³

The reason for this difference in price is that it's much easier for smugglers to transport migrant families intending to claim asylum in the U.S. than migrants who want to enter the country

undetected. Instead of crossing with the migrants and trying to evade Border Patrol, both at the border and at checkpoints further inland, smugglers transporting asylum-seekers need only to take them up to a crossing-point on the Rio Grande and tell them when to go over. There is zero risk for the smugglers themselves, hence the cheaper price if an adult brings a child with them.

Smugglers generally have a working knowledge of U.S. asylum policy, and they tell potential migrant families that if they claim asylum once in the U.S., they will be allowed to stay and work.¹⁴ This of course is true, due to the immense backlog in U.S. immigration courts, with wait times for a hearing of up to three years.

Conclusion

Without a doubt, there is a crisis at the southern border, but it's a deeply misunderstood crisis that's being driven by specific factors and disproportionately affecting specific regions of the border, primarily the Rio Grande Valley and El Paso. In general, the growing numbers of migrants now crossing the border are being driven by three major factors:

- If you're a minor or a family, it's even easier to enter the U.S. now than it was during the Obama administration for the simple reason that there is no capacity at detention facilities and families can expect to be released soon after being detained.
- Smugglers are now marketing to people —women, families—who don't want to undertake an arduous or dangerous journey. They have put in place a sophisticated and efficient busing package that has proven very popular with families,¹⁵ and word has gotten back to communities in Central America that they will not be detained for long once they enter the U.S.
- Conditions in Central America have not improved enough to induce people to remain in their home countries. Persistent poverty, violence, and corruption, combined with the fear that it's not going to be this easy to get into the U.S. forever, is prompting families to come now.

There is no easy solution to this crisis. Border security is part of the solution, but so is congressional action. As long as Central American families know they can gain entry to the U.S. by initiating asylum proceedings upon crossing the border, this will continue. As long as cartels and criminal networks know they can profit from trafficking migrant families to the border, they will do so. And as long as conditions in Central America continue to fester, families in those countries who can pay for it will seek a better life for their children by traveling north. ☆

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Testimony of Andrew Selee

President of the Migration Policy Institute

Policy Options for Responding to Changing Migration Flows at the Southwest Border

Before

Senate Committee on Homeland Security and Governmental Affairs

April 4, 2019

Chairman Johnson, Ranking Member Peters, and Members of the Committee:

Thank you for the opportunity to testify before the Senate Committee on Homeland Security and Governmental Affairs. My name is Andrew Selee and I am the president of the Migration Policy Institute, a non-partisan, independent research institution focused on practical and effective policy options for managing immigration in the United States and around the world.

We have always had migration across our shared border with Mexico, and most of it has always been legal and part of the normal economic exchange that takes place between our two countries. Illegal immigration flows from Mexico, which were once so significant, have been dropping dramatically since 2008 and are now only a fraction of what they used to be.¹ In the meantime, we have seen a rise in Central American unauthorized crossings since 2012 and most notably since 2014, but the long-term decline of Mexican unauthorized flows has meant that — until recently — the overall numbers crossing the Southwest border illegally were still at historically low levels.²

However, over the past few months, we have seen a significant rise in the number of apprehensions at the southwest border, mostly of Guatemalan and Honduran nationals, which are unlike anything seen in the past decade. Overall, apprehensions are still below prior peaks in the late 1990s and early 2000s, but have steeply increased in only a few months to levels not seen in years. There were 66,450 Southwest border apprehensions in February—the highest monthly total in the past nine years — and they are expected to reach nearly 100,000 in March.³

This migration flow is substantially different from those earlier peaks in terms of its origins, characteristics, and drivers—as well as prospective policy solutions that are needed to manage and control it.

¹ Ana Gonzalez-Barrera and Jens Manuel Krogstad, “What We Know About Illegal Immigration from Mexico,” Pew Research Center, December 3, 2018, www.pewresearch.org/fact-tank/2018/12/03/what-we-know-about-illegal-immigration-from-mexico/.

² U.S. Border Patrol, “Southwest Border Sectors: Total Illegal Alien Apprehensions By Fiscal Year (Oct. 1st through Sept. 30th),” accessed April 1, 2019, www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-southwest-border-sector-apps-fy1960-fy2018.pdf.

³ U.S. Customs and Border Protection (CBP), “Southwest Border Migration FY 2019,” updated March 5, 2019, www.cbp.gov/newsroom/stats/sw-border-migration; U.S. Border Patrol, “Total Illegal Alien Apprehensions By Month,” accessed April 1, 2019, www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-total-monthly-apps-sector-area-fy2018.pdf; Letter from Kirstjen Nielsen, Secretary of Homeland Security, to U.S. Senate and U.S. House of Representatives, March 28, 2019, www.dhs.gov/sites/default/files/publications/19_0328_Border-Situation-Update.pdf.

This current flow is predominantly Central American, not Mexican.⁴ It is comprised mainly of families and unaccompanied children (61 percent thus far in FY 2019; 51 percent family units and 10 percent unaccompanied children), rather than adults traveling alone.⁵ And it is also driven by a complex set of factors that include not only economic opportunity in the United States, but also the effects of chronic violence and poor governance in the countries of origin and the incentives created by the ballooning backlog in the U.S. immigration courts, which exceeded 850,000 cases in February.⁶ While the overall numbers are lower than they used to be at the height of previous migration waves, this mix presents a more complex picture to address in terms of policy.

Why an Increase Now?

At least four specific factors have driven this sudden increase in Central American apprehensions across the southwest border:

1. Changing Smuggling Patterns. The caravans that have received so much publicity have contributed only a small percentage of the rise in migration flows, but they have driven a dramatic change in the business model of the smuggling networks that move migrants from Central America to the U.S. border. The caravans presented an existential threat to the smuggling networks by offering potential migrants a way to travel more safely and cheaply through Mexico and to the U.S. border. The smuggling networks responded by innovating their prices and services, offering group rates for those traveling in larger numbers to the border and cutting prices for those who travel with children. U.S. Customs and Border Protection (CBP) reports that there have been at least 100 incidents of groups of 100 or more migrants traveling together in the first few months of fiscal year (FY) 2019, compared to only 13 of these in all of FY18.⁷
2. US Policy Chaos. Several U.S. government policy efforts to prevent migrants from crossing the Southwest border over the past year may have actually served to encourage additional

⁴ Thus far in fiscal year 2019, 87 percent of family unit apprehensions were from Guatemala or Honduras. And the Department of Homeland Security (DHS) announced in January 2019 that for the first three months of the fiscal year, apprehensions from Guatemala exceeded those from Mexico. CBP, “U.S. Border Patrol Southwest Border Apprehensions by Sector Fiscal Year 2019,” updated March 5, 2019, www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions; DHS, “DHS Releases Southwest Border Enforcement Statistics” (news release, January 9, 2019), www.dhs.gov/news/2019/01/09/dhs-releases-southwest-border-enforcement-statistics.

⁵ CBP, “Southwest Border Migration FY 2019.”

⁶ Transactional Resource Clearinghouse, “Immigration Court Backlog Tool,” accessed March 31, 2019, https://trac.syr.edu/phptools/immigration/court_backlog/.

⁷ Anna Giaritelli, “Border Patrol Just Took in a Mini-Caravan of More Than 100 People. It’s the 100th One This Fiscal Year,” *Washington Examiner*, March 28, 2019, www.washingtonexaminer.com/news/border-patrol-just-took-in-a-mini-caravan-of-more-than-100-people-its-the-100th-one-this-year.

migration rather than deter it. The brief period of family separation, which was well covered in regional media in Central America, highlighted the fact that families will, in fact, not be detained for long in the United States. Metering, which limits access to asylum processes at border ports of entry, may well have dissuaded many asylum seekers with legitimate claims from presenting their cases at ports of entry and redirected them to crossing routes between ports. And smugglers have proven adept at reinforcing the messages that potential migrants had already absorbed through the media. This policy chaos, coupled with a sense that the US government may at some point really shut down the border, has generated an urgency to migrate now while it is still possible.

3. **Worsening Conditions in Guatemala and Honduras.** Four years of drought in Central America’s “Dry Corridor” are affecting 5 million people in Guatemala and Honduras; in 2018, Honduras lost an estimated 82 percent of its maize and bean crops.⁸ While homicide rates have been falling across the Northern Triangle — one of several factors that has likely contributed to the sizable drop in migration from El Salvador, at one point the most violent country in the world. Gangs, once a mostly Salvadoran phenomenon, have proliferated across Honduras and Guatemala, creating a kind of predatory violence (extortion, kidnapping, robbery) that often escapes homicide statistics. Compounding this local-level violence, governance has worsened noticeably in the past year in Guatemala and Honduras, where national leaders are under siege for corruption and are pushing back against internationally sanctioned anti-corruption bodies that were designed to help citizens hold their government accountable.⁹ In contrast, El Salvador has seen a successful national election, with the winner bucking the country’s traditional two-party system, something that highlighted that country’s generally more functional democratic process.¹⁰ It is, perhaps, no coincidence that migration from El Salvador is dropping, though that may well also be tied to its comparatively older and more urbanized population, which has reduced long-term migration pressures.¹¹

⁸ World Food Program, *Seguridad Alimentaria Y Emigración*, September 2017, p. 22, <https://docs.wfp.org/api/documents/WFP-0000019630/download/>; Food and Agriculture Organization of the United Nations, “FAO and WFP Concerned About the Impact of Drought on The Most Vulnerable in Central America,” August 23, 2018, www.fao.org/americas/noticias/ver/en/c1150344/.

⁹ Peter Meyer, “U.S. Strategy for Engagement in Central America: An Overview,” *In Focus 10731* (Washington, D.C.: Congressional Research Service, January 3, 2019), <https://fas.org/sgp/crs/row/IF10371.pdf>.

¹⁰ Charles T. Call, “The Significance of Nayib Bukele’s Surprising Election as President of El Salvador,” *Order from Chaos* (Washington, D.C.: Brookings Institution, February 5, 2019), www.brookings.edu/blog/order-from-chaos/2019/02/05/the-significance-of-nayib-bukeles-surprising-election-as-president-of-el-salvador/.

¹¹ In 2018, 28 percent of El Salvador’s population was under age 15, compared with 34 percent in Honduras and 40 percent in Guatemala. Urban residents comprised 70 percent of Salvadorans, compared with 54 percent of Hondurans and 51 percent of Guatemalans. See Population Reference Bureau (PRB), “2018 World Population Data Sheet,” accessed March 31, 2019, www.prb.org/wp-content/uploads/2018/08/2018_WPDS.pdf.

4. **A Strong US Economy.** With US unemployment down to 3.8 percent and growth at 3 percent,¹² there is also a powerful magnet for potential economic migrants to make the journey north knowing that they may well find work. Interestingly enough, Mexican and Salvadoran migration has dropped despite these strong economic incentives, which suggests that those living in neighboring countries do not migrate unless there are a strong push factors at home as well.

One other possible explanation for the rise in Central American migration is worth considering but seems far less plausible: that Mexico's new government has not enforced its borders and simply lets migrants pass through. That doesn't seem to be borne out by the statistics. It is a little-known fact that the Mexican government has actually removed more Central American migrants since FY 2015 than has the U.S. government.¹³ And both detentions and removals of Central Americans from Mexico since December, when the new Mexican president took office, are similar to what they were during the same period last year.¹⁴ The Mexican government's decision to grant humanitarian visas to 13,000 migrants during a three week period in January might well have contributed to a sense that migrants could get through Mexico easily, but there doesn't seem to have been an overall drop in enforcement. Nonetheless, the Mexican government is clearly just as overwhelmed by the numbers and characteristics of the new migration flow as the U.S. government is.

Policy Options

Just as there is no single factor leading to the rise in migration from Central America — it is a result of at least four different factors interacting with each other — there is also no single solution to address this. Instead, there are several policy options that, taken together, could be helpful in reducing this migration and restoring a sense of control over flows at the border.¹⁵ Here are three that should be a priority:

¹² Bureau of Economic Analysis, US Commerce Department, "Gross Domestic Product, Fourth Quarter," News Release, March 29, 2019, <https://www.bea.gov/news/2019/gross-domestic-product-4th-quarter-and-annual-2018-third-estimate-corporate-profits-4th>; Bureau of Labor Statistics, US Department of Labor, "Labor Force Statistics from the Current Population Survey," accessed April 2, 2019, <https://data.bls.gov/timeseries/lns14000000>.

¹³ Ariel G. Ruiz Soto, Rodrigo Domínguez-Villegas, Luis Argueta, and Randy Capps, *Sustainable Reintegration: Strategies to Support Migrants Returning to Mexico and Central America* (Washington, DC: Migration Policy Institute, 2019), 8, www.migrationpolicy.org/research/sustainable-reintegration-migrants-mexico-central-america.

¹⁴ MPI calculations using data from the Mexican Interior Ministry (SEGOB), "Boletín mensual de estadísticas migratorias, 2011-19," accessed April 1, 2019, www.politicamigratoria.gob.mx/es/SEGOB/Boletines_Estadisticos.

¹⁵ For a further discussion of some of these points, see Doris Meissner and Sarah Pierce, "Policy Solutions to Address Crisis at Border Exist, But Require Will and Staying Power to Execute," Migration Policy Institute, April 1, 2019, <https://www.migrationpolicy.org/news/policy-solutions-address-crisis-border-exist-require-will-staying-power>.

1. **Fixing the Asylum System.** The existing asylum system has become overwhelmed and sclerotic under the surge of applications for asylum over the past few years. The number of people initiating the asylum process by requesting credible fear interviews at the Southwest border reached 93,000 in FY 2018, up from about 7,000 a decade prior.¹⁶ When these asylum seekers go on to file official applications, they add to the more than 850,000-case backlog in the immigration courts.¹⁷ Today, the asylum process provides neither quick resolution for those who are seeking protection from persecution, nor does it dissuade those who do not have strong claims but can use an asylum application as a means to stay in the United States while their claim is adjudicated.¹⁸ To make the asylum system efficient again, the administration could allow asylum applications filed by those arriving at the Southwest border to be adjudicated by U.S. Citizenship and Immigration Services (USCIS) asylum officers rather than sending them to the already overburdened immigration courts. Decisions could be made within months instead of years, and DHS could, in many cases, monitor applicants through case management or other forms of supervised release that help ensure that applicants show up for their court dates.¹⁹ This approach would both ensure timely protection for those fleeing from persecution and provide a deterrent to those without a demonstrated claim for asylum, as they would be removed more rapidly. My colleague Doris Meissner and her collaborators have offered a detailed plan on how to address this.²⁰

¹⁶ CBP, “Claims of Fear,” updated December 10, 2018, www.cbp.gov/newsroom/stats/sw-border-migration/claims-fear; DHS, *Department of Homeland Security Border Security Metrics Report* (Washington, DC: DHS, 2018), 57, www.dhs.gov/sites/default/files/publications/18_0718_PLCY_FY2017-Border-Security-Metrics-Report.pdf. The 93,000 requests in FY 2018 include those apprehended or determined to be inadmissible at the Southwest border who requested a credible fear interview. The 7,000 requests in FY 2008 include those apprehended at the Southwest border who requested a credible or reasonable fear interview.

¹⁷ Separately, within U.S. Citizenship and Immigration Services, 325,000 asylum cases are pending. U.S. Citizenship and Immigration Services, “Asylum Office Workload: January 2019,” accessed April 1, 2019, www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AffirmativeAsylumStatisticsJan2019.pdf.

¹⁸ One Department of Homeland Security (DHS) cohort analysis of migrants apprehended at the border in FY 2014 showed that by September 2017, only 38 percent of those seeking asylum by claiming credible fear of persecution were either deported or granted asylum, while 41 percent were still in immigration court proceedings. DHS, *2014 Southwest Border Encounters: Three-Year Cohort Outcomes Analysis* (Washington, DC: DHS, 2018), 6-7, www.dhs.gov/sites/default/files/publications/18_0918_DHS_Cohort_Outcomes_Report.pdf.

¹⁹ For instance, during FY 2015-17, the U.S. Immigration and Customs Enforcement (ICE) Family Case Management Program, a pilot program serving over 2,000 apprehended family members in five cities, witnessed only four households missing their court dates, resulting in a 99 percent compliance rate. GeoCare, *Family Case Management Program: September 21, 2015-June 20, 2017* (unpublished Summary Report, no date).

²⁰ This approach would require an investment in asylum officers, immigration judges, and reception centers, but this would be more than off-set by the diminishing costs associated with detention. Doris Meissner, Faye Hipsman, and T. Alexander Aleinikoff, *The US Asylum System in Crisis: Charting a Way Forward*, Migration Policy Institute, September 2018, <https://www.migrationpolicy.org/sites/default/files/publications/MPI-AsylumSystemInCrisis-Final.pdf>.

2. **Strengthening Mexico's Migration System.** The current Mexican administration has stated that reforming its migration and asylum system is a priority, arguing that the government should offer asylum and employment-based visas to more Central Americans so that they can stay in Mexico rather than heading to the U.S. border. Mexico has significant labor market needs in the center and north of the country, which would make this approach work well for both Mexico, by filling labor needs, and the United States, by taking pressure off the shared border. However, it requires significant investments in institutional reform of Mexico's chronically weak Migration Institute and overburdened asylum system and the know-how to carry this out. The U.S. government should consider supporting these efforts, directly and through the UN High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), so that Mexico can continue to strengthen its role in stemming migration northward by becoming a country of asylum and employment. There may also be opportunities to work with the Mexican government on external U.S. asylum processing (in Mexico or in Central America), something that the Secretary of Homeland Security has indicated is of interest.
3. **Tackling Smuggling Networks.** The U.S. government should explore additional ways of addressing smuggling networks in partnership with the Mexican and Central American governments, not only in combatting the messages of these illicit networks but in degrading their logistical and financial structures. To win support from regional governments, it will be important to focus on those smuggling networks that are the most predatory towards migrants and those that transport special-interest immigrants, often from countries outside the hemisphere, who present potential national security challenges.
4. **Investing in Governance, Public Security, and Youth Employment in Central America.** In the long term, the only sustainable solution to illegal migration from Central America is to ensure rule of law and economic development. These have been key components leading to the dramatic drop in the number of Mexicans attempting to migrate illegally over the past decade, and it may help explain why fewer Salvadorans seem to be leaving their homes. In the case of El Salvador it appears that some targeted, place-based U.S. investments in youth employment, reintegration services for returned migrants, and public security have also helped reduce gang involvement and created opportunities for young people.²¹ El Salvador has also gained some stability in terms of governance over time, and the homicide rate has declined noticeably in the past year. While there is no certainty that migration will remain low from El Salvador, there has been a noticeable drop so far. In contrast, Guatemala and Honduras have experienced a worsening political situation that has probably undermined many of the gains of local investments in similar programs. Therefore, going forward, development policy needs to focus not only on local interventions but on governance reforms — such as the anti-corruption commissions now active in the region — that anchor the more specific projects in a virtuous cycle of accountability. There is no guarantee that development

²¹ On reintegration services, in particular, see Ruiz Soto, Argueta, Rodriguez-Dominguez, and Capps, *Sustainable Reintegration*, cited above.

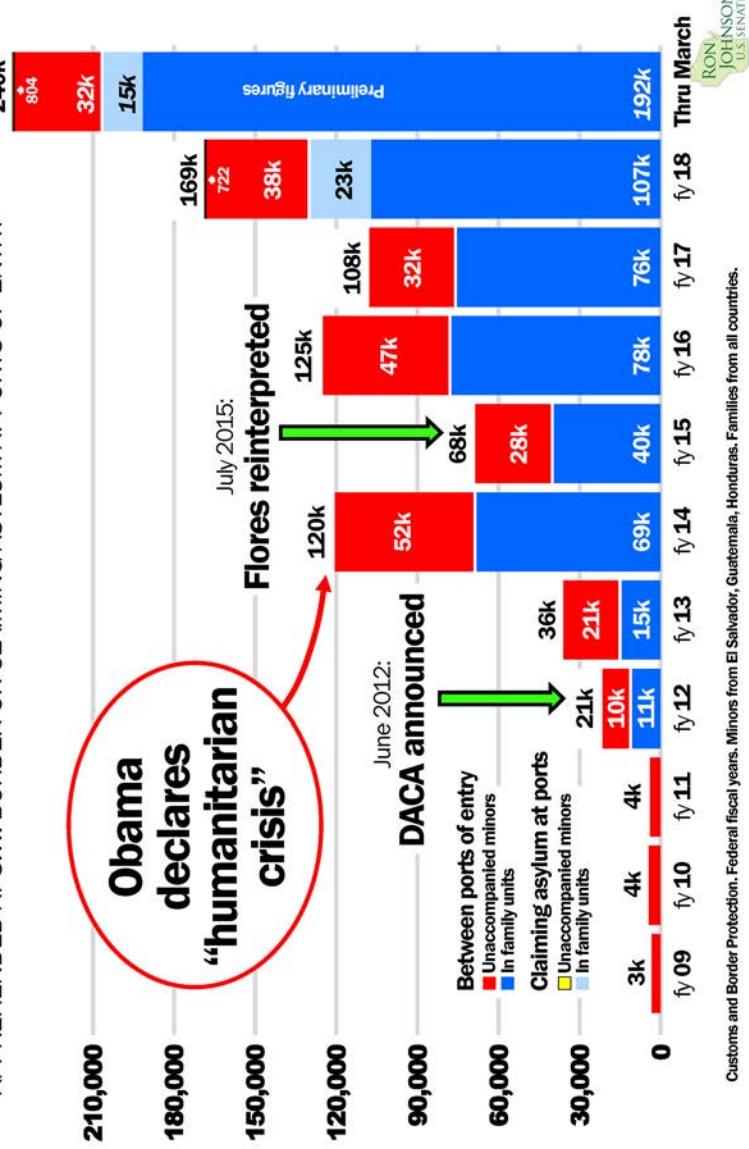
efforts, even under the best conditions, will lower migration pressures, but cutting these programs would almost certainly prolong these pressures over time.

Final Thoughts

To address migration from Central America, we need to be aware that there is no magic formula to stop migration flows and that we need a range of policy strategies to address this. It starts by understanding that some people are legitimate asylum seekers who need protection, and that we need to have an asylum system that can offer them refuge. At the same time, we need to make sure that our asylum system is sufficiently efficient and timely in making decisions that it discourages applications from those who do not have protection needs, and that we are working closely with the Mexican government to strengthen its own asylum system and to build new legal pathways for Central Americans to work in Mexico. Finally, we cannot stop addressing the root causes of migration — chronic violence, poor governance, and economic collapse — which fuel a desire to migrate northward. The example of Mexico, which once was a country of significant out-migration, should give us some hope for the future, but it also underscores the hard work that goes into changing circumstances on the ground enough that people have hope for the future, something that may still be a long way off in Central America, particularly in Honduras and Guatemala.

MINORS, FAMILIES, ASYLUM

APPREHENDED AT S.W. BORDER OR CLAIMING ASYLUM AT PORTS OF ENTRY





CWS Statement to the U.S. Senate Committee on Homeland Security and Governmental Affairs, pertaining to its hearing entitled *Unprecedented Migration at the U.S. Southern Border: By the Numbers* on Thursday, April 4, 2019

As a 73-year old humanitarian organization representing 37 Protestant, Anglican, and Orthodox communions and 23 refugee resettlement offices across the United States, Church World Service urges Congress to cut funding for immigration detention, deportation, and border militarization and to demand accountability over the Department of Homeland Security's (DHS) spending and practices. We call on all members of the Committee to recognize the importance of access to protection and uphold our moral and legal obligations to asylum seekers, unaccompanied children, and others seeking protection.

CWS unequivocally opposes the administration's repeated attempts to block access to asylum and proposals that would restrict access to asylum or weaken or eliminate provisions in the Trafficking Victims Protection Reauthorization Act ([TVPRRA](#)), which provides important procedural protections for unaccompanied children in order to accurately determine if they are eligible for relief as victims of trafficking or persecution. The United States can humanely process all of the families and individuals who arrive at our borders seeking protection. The search for protection is a legal right; the United States has moral and [legal obligations](#) under [international](#) and [U.S.](#) law to ensure that individuals seeking protection are not returned to those who seek to exploit them. Limiting access to asylum and other forms of protection, as well as legal representation and child-appropriate services only increases individuals' vulnerabilities to being trafficked for commercial sex or forced labor.

Immigration policies that repeatedly result in death do not make us secure. The death of two children in CBP custody pointedly highlights the urgent need for a shift in policy. Border crossings have declined to near-record levels; the number of apprehensions in FY 2017 is the [lowest figure since 1971](#). Although there has been an uptick in the number of arrivals this year, that uptick stems from families fleeing [violence, persecution, and desperation](#) from El Salvador, Honduras, and Guatemala. Militarizing the border and separating families not only undermines our moral and legal obligations, but also are bound to fail, as families continue to seek safety from the immense danger in their home countries. The United States can and should humanely process all of the families and individuals who arrive at our borders seeking protection.

Congress and the administration should utilize community-based alternatives to detention (ATDs) that [connect individuals with family members, faith-based hospitality communities, and local services](#) to help them navigate the legal system. Community-based ATDs like the Family Case Management Program (FCMP) are [effective](#) and [less expensive](#) than detention. The [FCMP](#) allows people to be released from detention, connects them with legal counsel, provides case supervision, and helps with child care and education. The program is [99 percent effective](#) at having families show up for check-ins and court appearances and also ensures departure from the United States for those who are not granted asylum. At a cost of [\\$36 per day per family](#), it is far cheaper than family detention, which costs over [\\$300 per person per day](#).

CWS strongly opposes sending troops to the border, building walls and physical barriers, and any other policy that further militarizes our border. Border communities are some of the [safest in the country](#). The most [recent data](#) available also shows each Border Patrol agent along the Southwest border apprehended on average about 3 migrants per month this year, far below FY 2000 levels (approximately 16 migrants per month). With CBP already getting an all-time high funding level for border security procurement and development alone, legislators should be looking for ways to rein in CBP's draconian enforcement efforts. Reports have [documented](#) cases of DHS deploying drones and piloting biometric programs without sufficient regard to privacy protections. Border technology is often used miles from the physical border, impacting U.S. communities. Warrantless use of these technologies comes at an unacceptably high cost, and border communities should not be subject to near-constant surveillance that intrudes on their lives. Walls and physical barriers also harm communities, raise flooding concerns, result in unlawful seizing of private property, and [disrupt wildlife habitats and migration routes](#).

As a faith-based organization, we urge Congress to hold the administration accountable to affirm the humanity and dignity of all asylum seekers, unaccompanied children, and others seeking protection.

UNPRECEDENTED MIGRATION AT THE U.S. SOUTHERN BORDER: PERSPECTIVES FROM THE FRONTLINE

TUESDAY, APRIL 9, 2019

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Portman, Lankford, Romney Scott, Hawley, Peters, Carper, Hassan, Harris, Sinema, and Rosen.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. This hearing will come to order.

I want to welcome all our witnesses. Thank you for your thoughtful testimony. As I said last week, I really encourage all the committee Members, if you have not had a chance, please read the testimony. I think these witnesses, again, have done a very good job of laying out the reality of the crisis that we face on the border.

I ask that my written statement be entered in the record.¹

Let us quickly put up the chart² that really describes this.

We do not have final numbers for the final week in March, but again, I am not going to go through the full explanation of this, but only to point out in less than 6 months, we have apprehended more than 240,000 either unaccompanied alien children (UAC) or people coming in this country as family units, individuals who according to testimony last week are part of a process, it is almost a well-oiled machine of the human traffickers, the transnational criminal organizations (TCOs), individuals that are moving people from Central America into this country, completely exploiting our laws, but 240,000 people in less than 6 months, and that compares to 120,000 in 2014, the year that President Obama correctly labeled that a "humanitarian crisis." Again, in less than half a year, we are double the level of 2014.

We are going to be hearing from people in the Customs and Border Protection (CBP), the folks that are trying to grapple with this growing crisis, how it has completely overwhelmed our system.

¹The prepared statement of Senator Johnson appears in the Appendix on page 143.

²The chart referenced by Senator Johnson appears in the Appendix on page 195.

But, again, this is going to be a very full hearing. We have representatives from the agencies that are grappling with this crisis. I want to thank you, first of all, for your service to this country, for trying to deal with it, but this is up to Congress. We have laws on the books and court decisions that need to be addressed through congressional action, through passing laws. From my standpoint, the goal of this is to reduce, if not stop, the flow of this illegal immigration. That has to be the goal of our policy and recognizing—I tried to make this point in the last hearing as well. We have a short term—it is a long-term problem, but we have a short-term crisis, and we have to address this with short-term measures.

I am all for developing and sending dollars and trying to help those nations whose public institutions have been destroyed by an insatiable demand for drugs in Central America, but that is not going to solve this problem anytime soon. We have to enact the laws so we can address this problem right now. We cannot afford to wait any longer.

One other chart¹ I want to quickly put up here, I had my staff take a look at this. If we are going to fix this—and Dr. Selee last week talked about having a more rapid adjudication process for that initial determination of an asylum claim, and the reason that is important is if we do not detain individuals, we only are able to remove about 7 percent. If we detain people and they have an invalid asylum claim, we can remove about 77 percent. So we have to be able to have an adjudication process in a time period where we have the detention facilities so we can actually remove them; otherwise, it is kind of a moot point.

We have to take a look at that initial hurdle in terms of credible fear or a more likelihood that their asylum claim would be viewed as valid. Eighty-five percent of asylum claims are denied. So we have to come to that determination a lot quicker.

This chart right here shows what type of facilities we would need based on the number of people coming in this country illegally on a monthly basis versus the number of days to adjudicate that initial claim, and it is pretty shocking.

Right now we had about 100,000 individuals is what the estimate is for March, about 100,000 people coming to this country illegally. If it takes 45 days—right now it is taking about 40 days I think to get that initial determination—we are looking at needing detention facilities. Somewhere about 125,000 beds is what this chart will show you because you are right between 150- and 100,000 beds, 45 to 30 day adjudication process. 125,000 beds. We got about 50.

So this chart also shows you the solution. Reduce the flow. Reduce the number of days to adjudication, and then we will have plenty of detention facilities.

Senator Hassan has been talking about this. I do not want to detain people. It costs a lot of money. What I want to do is I want to come to a very rapid conclusion, a rapid determination: This is a valid asylum claim or an invalid one. If it is an invalid asylum claim, we have to remove those individuals back to their home country.

¹The chart referenced by Senator Johnson appears in the Appendix on page 196.

We know this works. Secretary Michael Chertoff in 2005 with a surge of Brazilians, about 31,000 in that year came in from Mexico into our Southern Border. He realized that was a problem. So he initiated a process of rapid removal, and the next year, it was 1,400. So we know that works. That is what we need to do, but we have to pass the laws to do it.

Again, I will not go on any further, but I am just asking this Committee. I will be proposing legislation, hopefully working with Senator Peters and others on a bipartisan basis to fix this problem. We have to address it, and it is a short-term situation that we have to deal with this. We cannot wait for the long-term fixes.

With that, Senator Peters.

OPENING STATEMENT OF SENATOR PETERS¹

Senator PETERS. Thank you, Mr. Chairman. Thank you for holding this hearing today, and to all of our witnesses, thank you for being here today.

Last Thursday's hearing provided information about the scope and the scale of the challenges that we are now facing on our Southern Border. Important historical context was provided and a chance to examine how we can better work with the governments of Mexico, Guatemala, Honduras, and El Salvador.

During my opening statement, just 5 days ago in the hearing that we had last week, I said that securing our borders will take cooperation and credibility from this Administration and not chaos and not confusion.

Unfortunately, in the days since, just the 5 days, we have seen nothing but more chaos out of the Administration.

Since this first Southern Border hearing concluded, we have seen the Administration withdraw their nominee to be Director of U.S. Immigration and Customs Enforcement (ICE), a nominee who had a hearing before this Committee last year and was approved during the Committee meeting last month.

We have seen the announcement of Homeland Security Secretary Kirstjen Nielsen's resignation. We have seen the President fire Secret Service Director Randolph Alles for unknown reasons, creating another senior vacancy at the Department of Homeland Security (DHS). We have seen reports that the White House is potentially preparing to fire the Director of U.S. Citizenship and Immigration Services (USCIS). It is, in a word, chaos.

The problems we face at our Southern Border will not be fixed with high-profile firings or tweets or press conferences. It is going to take leadership, and as I said last week, it is going to take cooperation and credibility.

By the end of the week, the Department of Homeland Security will have no Secretary, no Deputy Secretary, no Chief Financial Officer (CFO), nobody leading multiple major bureaus and therefore virtually no accountability to the American people.

We are looking at an absence of leadership at the top of the third largest Department in our Federal Government, a Department charged with preventing terrorism, securing our borders, enforcing

¹The prepared statement of Senator Peters appears in the Appendix on page 145.

our immigration laws, safeguarding cyberspace, and ensuring resilience to disasters.

Fortunately, the men and women of DHS and its component agencies, career public servants, continue to show up to work, and they continue to do their best across the Country in the midst of a very difficult situation on our Southern Border.

Last week we heard that it is not just the number but the composition of the migrant groups that is straining our infrastructure. Specifically, the influx of families and children seeking asylum from dangerous conditions in Northern Triangle countries has created an unprecedented challenge for our frontline personnel.

There are no easy answers or quick fixes here, but we know that the trauma of detaining young children and separating them from their parents puts these children at risk of irreparable harm.

I have asked multiple officials from this Administration who have testified before this committee. I have asked, "How long is too long to detain a child?" I have yet to receive a real answer. We must do better.

We need to reduce the backlogs in processing asylum claims. Screening interviews are being delayed. The average wait to appear before an immigration court is now over 2 years, and the backlog is quickly approaching 1 million cases. This is simply unacceptable.

We need to address root causes of mass migration, take on the violence and impunity that regions across the Northern Triangle experience and disrupt the transnational criminal organizations that cash in on drug trafficking and human smuggling.

This will take careful cooperation with regional governments, law enforcement, and civil society, not cutting off existing funding to nonprofit organizations operating in the Northern Triangle.

We need Mexico to do more to address the flow of migrants across their Southern Border, but it will take sustained cooperation and American leadership, not baseless threats and disengagement.

Finally, we need to secure our Southern Border, and I look forward to hearing from our witnesses about what is working and what is not.

I look forward to hearing how we can replicate your successes and address your challenges, and I look forward to discussing how we can improve the data that Congress and Federal agencies rely on to make thoughtful decisions.

Thank you all for being here today.

Chairman JOHNSON. Thanks, Senator Peters.

Again, what it will take is legislation, and we need to act now to address this situation. We cannot rely on long-term fixes to address this situation now.

Again, that is why I want to work with you. That is why we are holding these hearings is to determine what we need to do now to fix this. So it does require legislation.

It is the tradition of this committee to swear in witnesses, so if you all stand and raise your right hand. Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. KARISCH. Yes.

Mr. HOWE. Yes.

Mr. TUBBS. Yes.

Mr. WHITE. Yes.

Mr. Cherundolo, Yes.

Chairman JOHNSON. Please be seated.

Our first witness is Rodolfo Karisch. Mr. Karisch is the Chief Patrol Agent for the U.S. border patrols Rio Grande Valley (RGV) Sector, and Commander of the Joint Task Force-West (JTF-W), South Texas Corridor. He previously served as the Chief Patrol Agent of the Tucson and Del Rio Sectors. He also previously served as CBP Attache to Mexico. Mr. Karisch.

TESTIMONY OF RODOLFO KARISCH,¹ RIO GRANDE VALLEY SECTOR CHIEF PATROL, U.S. BORDER PATROL, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. KARISCH. Chairman Johnson, Ranking Member Peters, and distinguished Members of the Committee, thank you for the chance to appear before you today.

I am proud to have served as a Border Patrol Agent for more than 30 years, currently as the Chief Patrol Agent in the Rio Grande Valley Sector, and also have served as the Chief Patrol Agent of the Tucson Sector. In my 30 years as an agent, I have never witnessed the conditions we are currently facing on the Southwest Border. This is not a manufactured crisis created by those of us who live and work in the border area.

The U.S. Border Patrol (USBP) continues to apprehend record numbers of people who purposely violate U.S. immigration laws. We are taken advantage of by gaps in our legal framework and that undermine the rule of law.

Criminal organizations along the border capitalize on these issues and make tremendous profits at the expense of both migrants and the American people.

RGV is responsible for securing 277 miles of border. This is a small fraction of the United States, but it accounts for 38 percent of all illegal immigration along the entire Southwest Border.

To put things into perspective, last year agents in RGV made 162,000 apprehensions. We are already at 147,000. At this pace, my sector alone, we will have more than 260,000 apprehensions by the end of the fiscal year (FY). On average, we apprehend more than a thousand people illegally crossing the border every day. That is roughly the capacity of 17 commercial buses.

Last week agents in my sector apprehended 1,766 people in a single 24-hour period. We expect the numbers to continue to climb as we enter the summer months, which will undoubtedly place both migrants and our Border Patrol Agents at significant risk.

Rescue missions will increase as a result of drawing additional personnel from our frontline law enforcement mission. Much media attention has focused on caravans from Central America, but the fact is that RGV is receiving caravan-equivalent numbers of migrants every 7 days.

The majority of people we are apprehending are family units and unaccompanied children from the Northern Triangle countries of

¹The joint prepared statement of Mr. Karisch appears in the Appendix on page 148.

Guatemala, El Salvador, and Honduras. Many are extremely vulnerable. Consequently, 30 to 40 percent of my daily workforce is doing humanitarian work at any given point in time. This includes processing, care and feeding, hospital watch, and transportation. It also means that at any given point in time, 30 to 40 percent of my workforce is not available to secure the border.

An agent who has taken a migrant to a hospital is not available to interdict narcotics, nor are we able to respond to other smuggling events or border intrusions when we encounter and apprehend large groups of people. The bad guys know this. They know our resources are stretched thin in addressing the humanitarian issue, which undermines our border security operations. They direct the movement of large groups into certain border areas as a diversion to facilitate the smuggling of drugs. This is an issue of both national security and officer safety.

In addition to the large groups of families and children from Central American, other illegal aliens from all over the world are caught trying to evade arrest. In my sector along, we have encountered people from 50 different countries. That includes Bangladesh, China, Turkey, Egypt, Romania, to name a few. People are traveling across hemispheres to attempt to illegally enter the United States, using the same pathways as the Central Americans.

We also encounter known gang members from some of the most violent gangs on earth, including MS-13 and 18th Street. Some of these gang members are fraudulently posing as part of these migrant families.

I would like to share with you a translation of a text message that we intercepted from an MS-13 gang member who was part of one of these fraudulent family units. He wrote, "You should see the amount of Hondurans that are traveling with a child, and they pay less to the smugglers in order to be delivered to the Border Patrol. It is a direct trip. They have them a few days with Border Patrol, and afterwards they are released. There are a lot of people with that law. That is the easiest way right now. Entire families are coming." So make no mistake about it. The world is getting out. If you are part of a family, if you bring a child, you will be released.

Just last Friday, our agents apprehended an adult Honduran male with a 1-year-old child. After questioning the man, the man admitted the child was not in fact his.

Something has to change. The levels of mass migration we are seeing profoundly impacts our ability to control the border and stop dangerous people and drugs from entering the country. I implore Congress to consider legislative action that restores integrity to our immigration system.

Thank you for your time, and I look forward to your questions.

Chairman JOHNSON. Thank you, Mr. Karisch. Again, thank you for your service.

Our next witness is Randy Howe. Mr. Howe is the Executive Director of Operations for U.S. Customs and Border Protection. In this role, he oversees 30 field offices and 328 ports of entry (POE). Mr. Howe.

TESTIMONY OF RANDY HOWE,¹ EXECUTIVE DIRECTOR FOR OPERATIONS, OFFICE OF FIELD OPERATIONS, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. HOWE. Good morning, Chairman Johnson, Ranking Member Peters, and distinguished Members of the Committee. It is an honor to appear before you today on behalf of CBP's Office of Field Operations (OFO).

U.S. Customs and Border Protection has four priority missions: national security, counter-narcotics, economic security, and the facilitation of lawful trade and travel. We operate 24 hours a day, 7 days a week, 365 days a year to accomplish those missions.

Our job is to move people and cargo through our ports of entry, while inspecting all of those for possible hazards and stopping threats at the border. Our Nation's economy and our national security relies on our vigilance.

It is an immense task even in the best circumstances. Our officers report to duty never knowing what challenges they will face or if their lives will be threatened. Factors like port volume, resource constraints, and enforcement activities make every day unpredictable.

In recent months, however, we have seen an unprecedented, unsustainable trend in our daily operations. Inadmissible migrants sometimes traveling in large groups are arriving at our ports of entry without proper documentation. The majority are family units, unaccompanied children, and nearly all of them seeking asylum.

I would like to give you a snapshot of the daily operations at one of our ports of entry. Just this past Saturday in Nogales, Arizona, our officers made five separate trips transporting migrants to medical facilities, including one trip transporting a family of five. Four unaccompanied alien children from Honduras arrived at our DeConcini Pedestrian Port of Entry. All claimed asylum. A family from Cuba entering the country by commercial bus then claimed asylum. A single vehicle inspection yielded 70 packages of methamphetamine, weighing more than 72 pounds; and a male imposter presenting someone else's documents was encountered as a pedestrian and taken in for processing.

Among all this activity, our offices are regularly transporting migrants to coordinating centers or into ICE custody or accepting detainees from other ports of entry to alleviate overcrowding. This is in addition to our work to process the people and cargo with a legitimate need to pass through our ports of entry every day.

While the current migration flows have taxed our officers at the ports of entry, the levels of migration between the ports is catastrophic. To support our colleagues in the U.S. Border Patrol, the Office of Field Operations has redirected 545 frontline officers from our southwest border ports of entry to help process and care for the record number of migrants.

But these actions are not without consequences. Travelers and shippers are experiencing increased wait times as they approach our Southwest Border ports of entry. This is true across all modes of travel: pedestrian, personal vehicles, and commercial trucks.

¹The joint prepared statement of Mr. Howe appears in the Appendix on page 148.

In El Paso, Texas, just yesterday, passenger vehicle wait times at the Bridge of the Americas were as long as 160 minutes. The peak time last year, same day, was 45 minutes.

The situation is even more dire in our cargo processing. Last year wait times for cargo processing in El Paso were less than 15 minutes. Yesterday wait times were as long as 250 minutes. That is about 4 hours. At the end of the day, 63 trucks were not processed. This is the direct result of the 545 CBP officers being reassigned to assist the Border Patrol with the care and custody of the surging numbers of migrants.

I cannot overstate the importance of these operations. The border security and humanitarian crisis at the Southwest Border has ripple effects that impact the entire Nation. Suspended services negatively affect the trade community, the supply chain, businesses that rely on these products, and ultimately the consumer.

Despite the challenges we face, our officers continue to process migrants claiming asylum, facilitate legitimate trade and travel, and interdict narcotics from entering the United States.

I appreciate the support Congress has offered to our men and women of the front lines, and I ask that you consider legislative action that will address this crisis.

Thank you for your time, and I look forward to your questions. Chairman JOHNSON. Thank you, Mr. Howe.

Our next witness is Timothy Tubbs. Mr. Tubbs is the Deputy Special Agent in Charge for the Homeland Security Investigations (HSI), Laredo, Texas, office, which includes McAllen and Brownsville, Texas. He previously served as the ICE attache to Mexico. Mr. Tubbs.

TESTIMONY OF TIMOTHY TUBBS,¹ DEPUTY SPECIAL AGENT IN CHARGE-LAREDO, TEXAS, HOMELAND SECURITY INVESTIGATIONS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. TUBBS. Good morning, Chairman Johnson, Ranking Member Peters, and distinguished Members of the Committee. I want to thank you for the opportunity today to be here to discuss U.S. Immigration and Customs Enforcement, Homeland Security Investigations, and our frontline perspective on the sophisticated smuggling threats that we face on the Southwest Border, the approaches that lead up to the border, and some of what we do to address transnational criminal organizations, that threaten border security, homeland security, and public safety by seeking to bring illicit goods, people, and proceeds into the United States.

HSI Special Agents use their vast authority to investigate cross-border criminal activity and work in close collaboration with U.S. Customs and Border Protection, our Office of Field Operations, United States Border Patrol, as well as the Drug Enforcement Administration (DEA). We work in a unified effort with domestic and international law enforcement partners to combat that illicit activity.

Today I will highlight how HSI since our inception has targeted, investigated, disrupted, dismantled, and brought to justice

¹The prepared statement of Mr. Tubbs appears in the Appendix on page 157.

transnational criminal organizations who threaten our border security, our homeland security, and our public safety through their cross-border illicit activity. HSI is grateful to you for the continued congressional support that enables us to successfully execute our complex investigative mission, both at home and abroad, working with our domestic and international partners.

HSI Laredo. So HSI Laredo is my current area of responsibility. It is one of the most active areas of responsibility for my agency. It covers approximately 300 miles of U.S.-Mexico border, and it covers what is the Mexican State of Tamaulipas with the United States border.

If you look at the HSI Special Agents that work in that area, they are on the true forefront of what is border security, and they truly live every single day what is border security for we as the U.S. Government and the United States of America.

Mexico is the front doorstep for transnational criminal organizations to bring in illicit goods and people to the United States.

Mexico is a major source country for the transit and production of illicit drugs destined for the United States, including marijuana, cocaine, methamphetamines, heroin, and most recently fentanyl. As a result of Mexico's dominant role, both as a source and transit point for illicit drugs destined for the United States, it is also a primary destination for illicit proceeds that the cartel earns through their distribution networks in the United States.

Mexico cartels use a variety of techniques to repatriate illicit funds from bulk cash smuggling to sophisticated trade-based money-laundering schemes. Many of these more complex schemes use third-party money launderers. As such, HSI has established an abundance of investigative tools in our arsenal to disrupt and dismantle cartel money-laundering operations.

Also, HSI and the Department of Justice (DOJ), the Criminal Division, we have established the Extraterritorial Criminal Travel (ECT) Strike Force Program, which addresses U.S. security risks posed by TCOs that smuggle special-interest aliens, and these special-interest aliens could potentially cause a threat to U.S. national security and public safety. This ECT program is designated to disrupt and dismantle these human-smuggling organizations worldwide through aggressive investigations and criminal prosecutions, both domestically and extraterritorially.

HSI works very close with our international partners to disrupt and dismantle TCOs. HSI has 68 offices in 51 countries, and we are positioned to utilize our established relationships with those host-country law enforcement to include the engagement in what we call "Transnational Criminal Investigative Units (TCIUs). These TCIUs are composed of DHS-trained host-country officials who have the authority to investigate and enforce violations of laws in respective countries. The TCIUs enable both ICE and the host country to conduct joint criminal investigations, joint prosecutions, while meeting the common mission of both the host country and ICE, also respecting the sovereignty of the host country and cultivating that international relationship.

These efforts, often thousands of miles away from our U.S. border in countries like the Dominican Republic and Mexico, both of

which I have had the opportunity to serve, essentially act as an outer layer of security for our Southwest Border.

Mexico specifically, again, where I have served for 3½ years before going to Laredo, has proven to be an outstanding partner in the fight against TCOs, taking down cartel leadership as well as taking down the leadership of these organizations that smuggle special-interest aliens and ultimately working with us cooperatively in efforts to dismantle those organizations.

The ICE attache in Mexico is our largest ICE presence outside the United States, and there, we have an established TCIU with the government of Mexico. Through our attache, we work well with the government of Mexico in combating TCOs and combating the transnational drug smuggling, weapons smuggling, human smuggling, and money laundering.

The spirit of cooperation and joint efforts between DHS components and our counterparts in Mexico is unprecedented.

HSI will continue to work with our law enforcement partners. We will continue to work with them both domestically and foreign to improve our efficiency and effectiveness of information sharing, operational coordination to combat TCOs and their illicit border activity, which ultimately threatens our border security, our national security, and our public safety.

I want to thank you for having me here today, and I look forward to answering any questions that you have.

Thank you.

Chairman JOHNSON. Thank you, Mr. Tubbs.

Our next witness is Commander Jonathan White. Commander White serves in the U.S. Public Health Service (USPHS) Commissioned Corps. He is the Health and Human Services (HHS) Senior Advisor in the Office of Emergency Management and Medical Operations. He previously served as the Deputy Director of Health and Human Services Office of Refugee Resettlement. Commander White.

TESTIMONY OF COMMANDER JONATHAN WHITE, PhD,¹ USPHS, DEPUTY DIRECTOR FOR CHILDREN'S PROGRAMS, OFFICE OF EMERGENCY MANAGEMENT AND MEDICAL OPERATIONS, OFFICE OF ASSISTANT SECRETARY FOR PREPAREDNESS AND RESPONSE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

Mr. WHITE. Good morning. Chairman Johnson, Ranking Member Peters, and Members of the Committee, it is my honor to appear today before you on behalf of the U.S. Department of Health and Human Services.

As the Chairman noted, my name is Jonathan White. I am a career officer in the U.S. Public Health Service Commissioned Corps. I am also a clinical social worker and an emergency manager, and most recently, I have been detailed as HHS's operational lead in the effort to reunify children who were separated from their parents at the Southwest Border.

I want to talk to you about the Unaccompanied Alien Children's program in the Office of Refugee Resettlement (ORR) in HHS.

¹The prepared statement of Commander White appears in the Appendix on page 173.

ORR is responsible for the care and the temporary custody of unaccompanied children referred to ORR by other Federal agencies, and as a reminder, ORR does not apprehend migrants at the border or enforce the immigration laws. HHS is not a law enforcement agency.

As defined by the Homeland Security Act (HSA), if a child under the age of 18 with no lawful immigration status is apprehended by another Federal agency and there is no parent or legal guardian with the child or available in the United States to provide care and custody of the child, that child is considered, the legal term, as an “unaccompanied alien child” and is transferred to ORR for care and custody.

ORR operates shelters nationwide that provide housing, nutrition, routine medical care, mental health services, educational services, and recreational activities, and these provide an environment that has parity with facilities in the child welfare systems that house children here domestically.

The facilities are operated by nonprofit grantees who are licensed to provide care to children by State licensing authorities, the same that would regulate such facilities housing domestic children. The one exception is ORR’s temporary hard-sided influx care facility on the former U.S. Job Corps site in Homestead, Florida, which is not required to obtain State licensure because it is located on federally owned property. However, children at that location generally receive the same level of care and services as children who are in a State-licensed facility.

The UAC program capacity has expanded and contracted over the years, driven by the astonishing fluctuations over time and the number of children referred and the average time children remain in ORR care.

Currently, HHS maintains about 14,300 beds nationwide. That is up from 6,500 beds on October 1, 2017, but it is also down from 15,800 beds on November 15, 2018. HHS continues to adjust its bed capacity constantly based on the most recent data, including information from our interagency partners, to help us prepare for changing needs.

HHS cares for all of these children until they are released to a suitable sponsor, almost always a parent or close relative, to provide care for them while they await their day in immigration court. These children also leave HHS’s care if they return to their home countries pursuant to an immigration judge’s order or they turn 18 years of age or they gain legal immigration status.

In fiscal 2018, 49,100 children were referred to ORR by DHS. From October through February of this fiscal year, we have received over 24,000 referrals.

In fiscal 2019 through February, children were discharged from ORR custody. Ninety-two percent of them were released to individual sponsors, and of those sponsors, 46 percent were parents, 45 percent were close relatives, and 9 percent were more distant relatives or nonrelatives.

On June 20, 2018, the President issued Executive Order (EO) 13841, and the U.S. District Court in the Southern District of California in Ms. L v. ICE issued its preliminary injunction and class certification orders on June 26.

Pursuant to those, Secretary Azar tasked the Assistant Secretary for Preparedness and Response to help us comply with that Executive Order and then subsequently with those judge's orders, and to that end, we stood up an incident management team to reunify children with their parents.

If the 2,814 children reported to the Ms. L court, as of this morning we have reunified 2,160 of them with the parent from whom they were separated. Another 595 children have left ORR care through other appropriate discharges, in most cases released to a family member sponsor.

There are 16 children still in our care who were separated but cannot be reunified with their parent because we have made a final determination that that parent poses an unacceptable risk to the safety and well-being of that children.

There are 32 children still in ORR care whose parents, after consulting with the American Civil Liberties Union (ACLU), have waived reunification, and there are 9 children in care whose subsequent review determined had not in fact been separated from their parents but were truly unaccompanied children.

As of this week, of the 2,814 children reported to the Ms. L court, there are only two children remaining who might still one day be reunified. We cannot reunify them at this time until the parent conveys their wishes to the ACLU.

The UAC program's mission is a child welfare mission. We seek to serve the best interest of each individual child. That has guided us in everything we do, including in our work to have each separated child back in his or her parent's arms or discharged safely to another family member sponsor when that is their parent's wish. We have done, and will continue to do, our best as a Department to achieve that goal.

Thank you for the opportunity to speak with you today, and I will be happy to answer any questions that you have for me about our program.

Thank you.

Chairman JOHNSON. Thank you, Commander White.

Our final witness is Greg Cherundolo. Mr. Cherundolo is the Chief of Operators for the Drug Enforcement Agency. He leads DEA's 222 domestic offices and 90 foreign offices. Mr. Cherundolo.

**TESTIMONY OF GREG CHERUNDOLO,¹ CHIEF OF OPERATIONS,
DRUG ENFORCEMENT AGENCY, U.S. DEPARTMENT OF JUSTICE**

Mr. CHERUNDOLO. Good morning, Chairman Johnson, Ranking Member Peters, and distinguished Members of the Committee. It is an honor to appear before you today to discuss Mexican cartels, the extent of their influence to manufacture, transport, and distribute illicit narcotics in our efforts to combat this threat.

I have had the honor and privilege of serving as a law enforcement official for 27 years, with the last 22 of those years being as a DEA Special Agent. When I reflect on those 27 years of experience, the sophistication and capacity of Mexican cartels is what worries me most.

¹The prepared statement of Mr. Cherundolo appears in the Appendix on page 180.

Dangerous and highly sophisticated transnational criminal organizations, or cartels, operating in both Mexico and the United States have been, and will continue to be, the most significant source of illicit narcotics trafficked inside the United States. Whether it is heroin or synthetic opioids, methamphetamine, or marijuana, the Mexican cartels are the primary source of illicit drugs on our streets.

Perhaps the most disturbing aspect of Mexican cartels has been the confluence of three things: the synthetic drug threat; the epidemic of opioid abuse; and the cartel's attempt to expand their profits by intentionally mixing fentanyl and fentanyl-related substances with heroin, counterfeit prescription drugs, and other illicit drugs, including cocaine and methamphetamine. This is done for one simple reason: greed.

This is a national threat and a public health emergency fueled by fentanyl, which is cheap to make, hard to detect, and dangerously potent.

Now consider this. Chinese and Mexican nationals are increasingly operating in concert, resulting in an alignment responsible for their proliferation of heroin, fentanyl, and related synthetics coming across our Southwest Border.

Couple this with the fact that a kilogram of fentanyl can be purchased for less than \$5,000 for China, and potential profits from the sale of that kilogram can exceed \$1.5 million. The cartels are deliberately seizing on the suffering of thousands of individuals to generate profit.

The same organizations are transporting methamphetamine and cocaine across the Southwest Border at an alarming rate. We cannot afford to lose our focus on cocaine and methamphetamine.

The cartels are responsible for record amounts of methamphetamine entering the United States, and recent increases in coca cultivation and cocaine production are particularly troubling, likely foreshadowing an increase in importation and abuse and overdose deaths.

DEA anticipates that Mexican cartels, such as the Sinaloa Cartel and the Jalisco New Generation Cartel (CJNG), as well as others will continue to be the primary networks operating in more than one country to plan and execute their criminal enterprises. These cartels do not observe boundaries or laws in Mexico, the United States, or any other country.

As you know, in 2017, Mexico extradited Joaquin "El Chapo" Guzman to the United States, and he was just recently convicted in the Eastern District of New York. This is a major milestone, but more work needs to be done.

Now what is DEA doing to counter this threat? We recognize this will take persistent efforts across a broad spectrum to include interagency and global partnerships. For decades, we have maintained a worldwide presence to address the source of drugs.

In Mexico, DEA continues to synchronize and expand capabilities to combat the growing epidemic. We have developed a bilateral heroin strategy for intelligence sharing, coordination of investigations, training, increased sharing of forensic information, and the control of precursor chemicals.

We also participate in the North American Drug Dialogue, which focuses on building a strategy to attack the production, trafficking, consumption, and misuse of illicit narcotics in North America.

DEA will continue to aggressively pursue criminals trafficking in illicit drugs. Targeting the world's most dangerous drug traffickers and their criminal organizations is a dynamic and evolving mission, and it comes with a myriad of challenges.

Throughout our history, DEA has aggressively met those challenges and produced impressive results.

We look forward to continuing our work with you and your Senate colleagues to identify resources and authorities necessary to complete our mission, and I thank you for the opportunity to testify before the committee today on this important issue. I look forward to your questions.

Chairman JOHNSON. Thank you, Mr. Cherundolo.

Again, I really appreciate the attendance here by Members, so I will defer my questioning until the end.

We do have a vote. We are going to deal with it at 11 o'clock. My intention will be to keep the hearing going. I hope we can get some cooperation by committee Members.

With that, I will turn it over to Senator Peters.

Senator PETERS. Thank you, Mr. Chairman, and thank you again to our witnesses for your testimony today.

Mr. Chairman, I also have a letter here from the National Treasury Employees Union (NTEU) that I would like to submit for the record.¹

Chairman JOHNSON. Without objection.

Senator PETERS. Thank you.

A big part of what we have been trying to accomplish in the last hearing and this hearing is trying to get just a sense of what are the facts on the ground that we can all agree on in a bipartisan way, take the rhetoric, push that all aside, and just figure out how we can deal with a significant problem.

Related to that, of course, is having good data. You need to have the numbers, and the Chairman is a numbers person, like I am. We want to make sure that we are getting that kind of information and we are getting it on a timely basis, which has not really been happening.

The Government Accountability Office (GAO) recently recommended that the DHS develop and implement a process to systematically review and look at the reliability of the data used in its Border Security Metrics Report and identify any limitations in how it is used.

So my question is for all the witnesses. Are there any data points that we are not collecting now that would provide critical insight into these challenges that we are having in the border?

I would like to ask all of you if you have anything to share related to what we are not collecting now that you think we should be.

Mr. Karisch, do you want to start us off?

Mr. KARISCH. Senator, we collect a lot of information right now, but I think we also need to go a little further in regards to the fi-

¹The letter referenced by Senator Peters appear in the Appendix on page 217.

nances of what exactly criminal organizations are making. I think that that is key.

We all have our ideas on how much money flows into the hands of criminal organizations, whether it is the brush guide, whether it is the transportation cell, the stash house operators. I think we collectively need to get better at sharing that information to attack the finances. I do not think that we are going to be able to interdict our way out of this problem without attacking the finances. So I definitely would think that more financial information in data shared between the different agencies would be helpful.

Mr. HOWE. I agree with everything that Chief Karisch said. We are an information agency. We collect lots of data points. Everything that we do, the migrants that we are intersecting, the different modes of narcotics that are coming through our border, working with our interagencies, just to continue to work together with our interagencies and sharing information and building on those trends so we continue to target the narcotic threat.

Mr. TUBBS. I can tell you specifically for us as Immigration and Customs Environment, Homeland Security Investigations, that is very important to us in everything we do, justifying our operations showing results for the end of the year, staffing, etc., and we are very meticulous about our stats.

I can tell you even today, coming forward to be here to testify in front of you, we are very careful about the stats that we report, the information that we report, and we want to make sure that we report that correctly.

But we do look very closely at the money laundering, the finances, every criminal investigation that we conduct, whether it is human smuggling. Whether it is narcotics, weapons, child exploitation, child pornography, intellectual property rights, we have specific groups that just look at finances, and that is information that we collect very closely and very carefully. I think that is something we can share with our partners in DHS.

And just across DHS as far as sharing of information, if there was a one-DHS information compile and share, I think that would be beneficial to all of us.

Thank you.

Senator PETERS. Great. Thank you. Commander.

Mr. WHITE. I do not think we have sort of data points that we are missing. I think the effectiveness of our agency is sometimes challenged by the fact that we are a child welfare agency in a surrounding law enforcement process, and I think there continue to be challenges with exchange of information because of the inherent challenges we have receiving some law enforcement-sensitive information that would enable us to make the safest placement decisions we could for a child, including receiving 213 information on children and those accompanying them.

Thank you, sir.

Senator PETERS. Thank you.

Mr. CHERUNDOLO. Senator, I do not think there is a data point that my partners here at the table do not already collect related to the specific border; however, the one data point that we can point to at least from a perspective of Chinese and Mexican trafficking groups trafficking in fentanyl is how the class scheduling of

fentanyl and fentanyl analogs has affected—when we look at the data points we look at across our seizures as a result of our investigations, we find that anytime that our Chinese counterparts have controlled fentanyl or fentanyl analogs, it has decreased the number of seizures in us seeing that analog here in the United States.

Because those groups are working together to get fentanyl into the United States, I think that has helped us to reduce the amount of fentanyl that is leading to overdoses in the United States.

But as far as the border-related data points, I think our partners have covered down well on that, and we continue to share information back and forth as a result of our investigations and what they are doing as well.

Senator PETERS. Thank you.

I have heard all of you talk about sharing of data. My question to you, Commander White, in January the HHS Office of Inspector General (OIG) concluded that the agency faced significant challenges in identifying separated children—and this is a quote—“including the lack of an existing integrated data system to track separated families across HHS and DHS.”

So, Commander, based on your experience as the Federal health coordinating official for the mission and reunifying children who are separated, could you tell us more about that? What are the gaps? What do we need to be doing to make sure that we are able to identify where the separated children are?

Mr. WHITE. So, as a reminder, we are able in ORR to tell you for any child who has been in our care to whom we release that child, what the relationship of that person to the child was and the address that they had when we release them.

I think this is key, while we now know every child who was in our care on June 26, of those 12,000 children, whether each child was separated or not separated, what we do not know and what HHS OIG correctly documented is that we still do not know how many of the children we had already released to a family member had been separated or referred to us.

But the problem is not one of interagency data sharing, per se. The problem is that children were separated and no record was kept of it. That is not a data exchange problem.

It is also more fundamentally the problem that the unaccompanied alien children program is designed for unaccompanied children, not separated children, and orderly systems for exchange of data do not undo the harm caused by separating children from their parents. That is the proper focus for all congressional inquiries about separation. What are the legitimate conditions under which a child may be separated from a parent at the border? What are the appropriate systems, including what kind of rights of remedy and appeal does a parent have? How can ORR and DHS have equal power to determine if a child is accompanied or unaccompanied, so that ORR may refuse a referral of a child who is in fact accompanied?

The issue is not how well it was tracked; the issue is that it happened at all.

Senator PETERS. Well said, Commander. Thank you for that testimony. Appreciate it.

Chairman JOHNSON. Commander, as long as we are on this topic, just real quick, reading your testimony, it seemed like a real challenge was complying with a court order in terms of what the definition was of a separated child.

There are real legitimate reasons to separate a child from an adult. For example, we heard in testimony that an adult male finally made it with a 1-year-old child who was not his. Could you just speak to that?

Mr. WHITE. We have always seen appropriate separations of children, both from parents and from people who claim to be their parents fraudulently, and it is our experience that our colleagues in DHS very honorably attempt to confront a really difficult set of challenges when they apprehend a minor.

The real problem is that there is no real legal—there is no statutory guidance when a child may be separated, under what conditions, what is a permissible reason. There will always be some children separated from parents for reasons of the child's safety or the need to immediately criminally prosecute someone with, for example, felony warrants. There will always be children separated from individuals who fraudulently claim to be parents who are not. But that is different from what we saw over the last year.

Chairman JOHNSON. Again, I just want to understand your testimony.

Part of the problem and part of the confusion here is for years, we have been doing legitimate separations for a host of reasons, and part of complying with this was trying to figure out exactly what matched the dictates of the court order, correct?

Mr. WHITE. The historical norm is that about 0.3 percent of all referrals are separations. In the fall of 2017, that increased tenfold to 3 percent. By the spring, it was much higher than that as a percentage. So the issue is how do we determine what are the reasonable standards for separation, and that is a job for Congress.

Chairman JOHNSON. So, there again, we need some legislation. Senator Portman.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Chairman. Thank you for holding the hearing and for each of you for your service.

These are difficult times, are not they? All of you have been in this business for a long time. I looked at your resumes. You probably have never experienced something quite like this, the influx of particularly families and kids. We are in a crisis on the border. We certainly are, and it is worse in terms of families and kids than it was when President Obama called it so, a crisis. So I appreciate what you are doing.

I have focused a lot on the pull factors. The push factors are also important, what we do with these Northern Triangle countries—Guatemala, El Salvador, Honduras—is incredibly important, but that is going to be a longer-term prospect.

Short term, I want to ask, if you do not mind, Mr. Karisch, Mr. Howe, and Mr. Tubbs, do you believe the people who are coming here, family units and otherwise, are coming here primarily for economic reasons and primarily to get a job that pays better for their families?

Mr. KARISCH. Sir, based on what I have seen out in the field at this point in time, the vast majority are coming here for economic reasons or, of course, for family reunification. I am not saying that there are not credible fear claims or asylum claims out there that are true.

Senator PORTMAN. I am not either. I think that number is about 85 percent of those who seek asylum are not getting asylum because they cannot meet the criteria.

But my question to you is, Do you think most folks are coming here for economic reasons to get a better job?

Mr. KARISCH. Yes.

Senator PORTMAN. Mr. Howe.

Mr. HOWE. Agree, Senator, the same. The numbers prove that out, the 85 percent that are being claimed.

Senator PORTMAN. Mr. Tubbs.

Mr. TUBBS. Yes, sir. I would agree that they are coming here for economic reasons. I mean, anytime we look at unaccompanied children or family units, one of the things that we look at specifically is HSI and doing our criminal investigations to ensure that there is no family fraud, to look at the welfare of the child, that there is no case where they are put in a situation for child exploitation.

It is also a reason why we have increased our work site enforcement, our interior enforcement, because that really is a pull factor.

Senator PORTMAN. Let me focus on that for a second. Would it surprise you to know that under our current E-Verify system, one, it is not mandatory; two, often people can use a fake ID, a fraudulent ID, Social Security card or driver's license? And so we do not have a system that is effective to know who is legal or who is not so that the employer can make that determination. I mean, that is what we have now, correct?

Would you support a mandatory E-Verify system so that we can help to reduce the magnet, the pull?

Go ahead. Mr. Howe, you came to the mic first.

Mr. HOWE. Yes. Absolutely, we would support that. Anything that would reduce the pull factor.

Senator PORTMAN. Mr. Karisch.

Mr. KARISCH. Yes, sir.

Senator PORTMAN. Mr. Tubbs.

Mr. TUBBS. Any tool that we get is going to help us greatly.

Senator PORTMAN. Yes. We have a bipartisan proposal to do that, and I think that is something that sometimes we miss in this conversation about the border, as important as it is to have a secure border. When you have that kind of a pull factor, that kind of magnet, people find a way, do not they, to get through, over, or around the border?

Commander White, you and I kind of know each other. I believe you are a compassionate person, and I think you care a lot for these kids. I think you have been in a very tough situation. You have talked about that today.

I know there is now a discussion about reinstating the zero-tolerance policy, which led to the family separations you talked about earlier.

What was the effect on ORR last year when the Administration implemented the zero-tolerance policy?

Mr. WHITE. So the effect of zero tolerance or of other policies that resulted in separating children from family units, as a reminder, the great majority of children who cross our border each day are accompanied. They are part of family units. Most typically, they are with a parent, and they are accompanied.

So the first thing that happened to the program is that the program's capacity was overwhelmed, but to say that sort of understates the severity of the harm because it was overwhelmed with children that we are not prepared to serve easily because ordinarily the great majority of the children that we receive, about 80 percent of them, are teenagers.

But when you separate children from their parents, we get babies and toddlers and other very young children. So, as you know, of the 2,814 children, 107 of them were 4 years of age or younger.

Our specific capacity that States have licensed to serve what we call tender age under 12 and very young 5-and-under children was exceeded. This puts these children at significant risk, and of course, it also bears repeating that separating children from their parents entails very significant risk of severe psychological harm to those children, and that is an undisputed scientific fact.

Senator PORTMAN. Commander, you also have a Ph.D., so you have some credibility in terms of understanding that dynamic.

Let me ask you this. If we were to do it again tomorrow, you have said earlier in your testimony there was a systems breakdown. Do we have the infrastructure to handle it? Yes or no.

Mr. WHITE. We have made improvements to our tracking. We do not have the capacity to receive that number of children, nor do we have the capacity to serve them, nor is it possible to build a system that would prevent the mass traumatization of children.

Senator PORTMAN. OK. Mr. Howe, I think you would agree that your detention facilities are full right now. I am talking about your broader detention facilities, not just for unaccompanied kids or kids who are separated. So we do not have the capacity right now, the infrastructure. Is that accurate?

Mr. HOWE. At our ports of entry, we do not have long-term detention, but at the end of the process through ICE Enforcement and Removal Operations (ERO), yes, we are full.

Senator PORTMAN. Yep, we are full.

By the way, Commander White, has anybody consulted with you about the idea of reinstating the zero-tolerance policy?

Mr. WHITE. No. No, sir.

Senator PORTMAN. You get about 2 to 300 kids a day now coming in, unaccompanied kids? You have about 12,000 kids in your care. You are working on this court order to try to reunify kids, but I am talking about just unaccompanied kids who come in.

Let me ask you just briefly about your problem you have had in getting sponsors. We are very concerned here in this Committee and elsewhere that you were sending kids out to sponsors who were traffickers.

In one case in Ohio, as you know, the Marion egg farm case, we had kids who were literally given back to the traffickers who had brought them up from Guatemala, and they abused these kids. There have been, by the way, seven indictments now in that case of traffickers.

But let me ask you. How are you doing now with sponsors? I mean, we wanted to be sure that the sponsors were fingerprinted, that there was a way to understand who these people were, so you were not giving kids out to traffickers again. You put that in place. My understanding is there was concern about ICE and others following up with those individuals, and therefore, your sponsorship pretty much dried up. Now you have more sponsors coming back because in the appropriations bill, I guess we said that ICE cannot follow up from an immigration perspective. Is that accurate?

So tell us how this is working.

Mr. WHITE. So we continually adjust our case management vetting methods to try and find the right balance between safety and discharge and timeliness and discharge.

We grossly failed in 2014, those children in that egg farm case, and that led to a revolutionary change inside the program about our standards. Our standards now are not comparable to what they were then.

But in 2017, I would submit that we actually pushed safety so far that it broke discharge, and children stayed in care an unprecedented average length of time, and our discharge rate, which is for every 100 children in care, how many get discharged every day, that fell to below 1 percent. This is why the Tornillo Temporary Influx Facility was stood up. That was a direct consequence of the combination of separation and falling discharge rate.

By making appropriate changes, including now we only—under our current operational directive, we only do fingerprint background checks. We do all the other kinds of background checks on every sponsor, but we only do fingerprint background checks on parents if there is another red flag, another indication of danger.

Our discharge rate is back up to 2 percent. The average length of time of children in care continues.

But I want to be clear. We studied every case where we denied a discharge to a parent based on the fingerprints, and we did not find cases where we did that on fingerprint only. We found the identified threats to those children's safety through the numerous other methods that we used at identify verification, relationship verification, and child safety.

We are in a different world than we were in 2014, but we will continue to make changes as we need to, to balance safety and timeliness and discharge.

Thank you, sir.

Senator PORTMAN. Thank you.

Thank you, Chairman.

Chairman JOHNSON. As long as we are talking about discharge and sponsors, we just got some information from HHS, and I just want you to confirm this, Commander.

Between July 2018 and January 2019, there were a total of 23,445 unaccompanied children or children discharged to a sponsor. 18,459 of those were released, discharged to someone without legal status. Is that a pretty accurate figure?

Mr. WHITE. I do not have in front of me the numbers, but those numbers would be consistent with general patterns. The majority of sponsors, individual sponsors, are people without immigration status.

Chairman JOHNSON. I will just ask for consent to enter this into the record.¹

It just shows again how completely out of control this process is right now. Senator Hassan.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you, Mr. Chair, and I want to thank you and the Ranking Member for this hearing today. I want to particularly thank our witnesses. Thank you for your service. Thank you as well to all the men and women who you work with each and every day.

Before I begin my questions, though, I do also want to express my profound concern about the turmoil at the top most levels of the Department of Homeland Security. The Department is tasked with the vital mission of securing the Nation from the many threats we face, and the type of turnover we are seeing right now presents a direct threat to the ability to effectively carry out that mission.

We need to see qualified leaders put forward who have the experience needed to keep Americans safe and who will also stand up to the President, if necessary, to uphold the rule of law and the values that make us strong.

I want to turn now to a question to Mr. Howe and Mr. Cherundolo because last Congress we passed—and the President signed—a bill that would provide more technology for border agents to use so that they could detect fentanyl at the border.

Last spring when I was at the border, I heard during my visit that the agents still did not have all the access to that equipment.

Former Secretary Nielsen stated that this was unacceptable when she testified before this Committee last May.

To both of you, can one of you update the Committee on how the International Narcotics Trafficking Emergency Response by Detecting Incoming Contraband with Technology (INTERDICT) Act implementation is going now? Do our agents have the technology they need to keep them safe as they are detecting fentanyl?

Mr. HOWE. Thank you for the question, Senator.

The \$564 million that you speak of, the non-instructive inspection (NII) enhancements for FY19, that is going to really change the way we do business on the Southwest Border. It is really going to transform our capability to scan more vehicles and more trucks, considerably more than we are doing today. So it is going to take some time to work with the vendors, the purchase, and to get them into place, but it really is going to transform where we are doing the interdiction.

We know that through our mail facilities that we are seeing fentanyl. So the \$45 million that we received also in FY19 will allow us to enhance our NII, or non-instructive inspection, technology in both our mail facilities and our express consignments.

Senator HASSAN. OK. So it is still a work in progress is what you are telling me. That we do not have all the technology that is provided by the funding yet?

Mr. HOWE. We are working through it. It is going to take some time.

¹The information referenced by Mr. White appears in the Appendix on page 205.

Senator HASSAN. Mr. Cherundolo, do you have anything to add?

Mr. CHERUNDOLO. Senator, the only thing I would add, that any of that is welcome to us because many times those seizures at the border are the start of an investigation—

Senator HASSAN. Right.

Mr. CHERUNDOLO [continuing]. For both DEA and HSI, but we would support any advanced technology that can be given to our colleagues on the border. But those would not specifically apply to DEA.

Senator HASSAN. OK. Thank you.

I am still concerned that we do not have as much equipment as we need. I am very concerned about the safety of the people on the front lines. Fentanyl, as we all know, is so dangerous even to the touch. So I will look forward to following up with the agency about how we can accelerate this.

Commander White, I wanted to follow up a little bit with you on the discussion that you have just been having about the family separation policy and the efforts that your agency has made to reunite families and children.

You talked about the numbers in the Ms. L case, that class of individuals represented by the ACLU, but we also know that there are other children—and you just mentioned it in your testimony—who before the policy was announced were apparently separated from their families.

When you appeared before this Committee last year and just now, you were very clear about the impact of family separation on children. That children are traumatized and can suffer long-term psychological damage from this kind of separation, and I thank you for your clarity and your honesty on that issue.

But that is why I was so troubled to see your statement a few days ago stating that it could take 2 years to identify what could be thousands of children who were separated from their families. Can you tell me why it will take so long and what we can do to speed this up?

Mr. WHITE. Yes, Senator.

So what the Senator is referring to is my declaration and the plan which I developed and which the government has submitted to Judge Dana Sabraw in the Southern District of California on how we would do that identification.

I want to be clear. The 1 to 2 year timeframe is if we reviewed all of the approximately 47,000 children who were referred by DHS starting on July 1, 2017, and had already been discharged to a family member or otherwise appropriately discharged by the date of the court hearing.

The plan—and this is in the declaration—is designed to accelerate that process. I do not know that it will, but it represents my personal belief if the best, most effective way to find the children, to identify which of the children that were discharged were separated, and to do so as fast as is possible.

But the answer to your question is because it is 47,000 children. They have all been discharged, and there is no list. This is the fundamental reality.

The reason that it is challenging now is because there is no list of separated children. We must identify them. So we will use, if the

judge approves it, the methods that I have outlined, and if he does not approve it, without getting too much in litigation, then I guess we will all be back to the drawing board.

I believe that the plan, which is in my declaration, is the best way to identify who the kids were. That is why.

Senator HASSAN. Yes or no. Would more staff help you do it faster?

Mr. WHITE. I do not believe that staffing is the key variable.

Senator HASSAN. Would you please commit to submitting to me any recommendations you could make in terms of resources or other things Congress could provide to you that would help you speed that process up?

Mr. WHITE. Yes, ma'am. I will make that commitment.

As a reminder, this is before the judge currently, and I am awaiting his direction.

Senator HASSAN. I understand that.

Commander White, I just also wanted to again thank you for being clear about the impact of what has been an inhumane and un-American policy of family separation, and I take it from your comments earlier in your exchange with Senator Portman that you do not support reinstating this policy?

Mr. WHITE. I would never support the use of family separation, the systematic traumatization of children as a tool of immigration policy, but it is not about what I support.

Senator, it is about what you and your colleagues support, and it is up to you to define the conditions under which a child may be separated. Congress has not done that, and you need to.

Senator HASSAN. Thank you. I appreciate that very much, but I also appreciate that I believe that this Administration should not move forward with family separation. I believe there are other ways we can secure our borders, and I appreciate very much the input and the feedback that you have all provided to us today.

Thank you, Mr. Chair.

Mr. Cherundolo, I have a question I will submit to the record for you about southbound trafficking of guns and cash going over from the United States to Mexico. I would like to follow up with you about how we can slow that kind of traffic.

Mr. CHERUNDOLO. We would be happy to get you the information, Senator.

Senator HASSAN. Thank you very much.

Thank you, Mr. Chair.

Chairman JOHNSON. Senator Lankford.

I was told that the vote was delayed by about 10 minutes, so we have plenty of time for both you and Senator Romney, if you are sticking around.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. We will take it from there. Thank you, Mr. Chairman.

Commander White, the children that are being placed in homes, the UACs specifically, you said that vast majority of those, you are placing in homes to someone who is also not legally present in the United States. So this is typically teenagers, and what percentage

do you expect are being placed in homes of someone who is not legally present in the United States?

Mr. WHITE. I do not know a percentage. I can say only that it is the very great majority.

Senator LANKFORD. So are we talking 80 percent, or are we talking 55 percent?

Mr. WHITE. I would assume it would be closer to 80, but I do not have an exact percent.

Senator LANKFORD. OK. How can we get that number?

Mr. WHITE. We can work, to the extent that we have it, to provide it to you.

Senator LANKFORD. So you are saying the vast majority, we expect are not legally present or we know are not legally present?

Mr. WHITE. I would have to get back to you on that.

Senator LANKFORD. So, in the background check, are we trying to verify if this person is legally present or not or just if they have a criminal record in the United States?

Mr. WHITE. The background check in many cases does, indeed, look at immigration issues, subject to what we get from interagency partners.

So, in each individual case, we would know the immigration status of the sponsor, but that does not mean that we have ready aggregate reporting. So that is why I do not have all the—

Senator LANKFORD. OK. Wait. Hold on for a second. Help me understand that. So you do know for each sponsor—

Mr. WHITE. Yes.

Senator LANKFORD [continuing]. If they are legally present or not?

Mr. WHITE. Based on the records we receive from other agencies, yes.

Senator LANKFORD. So then could not we just get a percentage, then, of those individuals, the UACs that have been placed, what percentage have been placed in homes of someone who is not legally present?

Chairman JOHNSON. Senator Lankford, really quick, in front of you, that is what I just entered in the record. Seventy-nine percent from whatever the dates were, were placed with a sponsor with no legal status.

Senator LANKFORD. Right.

Chairman JOHNSON. I think the other thing to point out is fingerprints only tell you whether they have a criminal record in America. They do not do—

Senator LANKFORD. Right.

Chairman JOHNSON. OK.

Senator LANKFORD. Right. So that is what I am trying to figure out.

So the background check is verifying whether they have a criminal record in the United States.

Mr. WHITE. We seek, to the extent we can get it, to also get information on criminal history in the country of origin.

Senator LANKFORD. This is just an ongoing issue because we have parents or relatives that have come to the United States illegally across the border, have worked here for years, who have sent a message back home, and then they are out paying someone to be

able to transition then through Mexico to be able to come here. And then we are delivering them the last mile back to their families, to be able to reunite families, in that sense, of someone who is not legally present here and then also with a child that they transited with someone who is a nonrelative through Mexico to get here. Is that the typical story? Mostly teenagers?

Mr. WHITE. It is mostly teenagers.

I do not have any way of knowing how many of them—

Senator LANKFORD. Yes, how they got here.

Mr. WHITE [continuing]. Were with their parent that did the transition.

But the scenario you described would not be uncommon.

Senator LANKFORD. Thank you.

In our hearing last week, Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) and *Flores* came up as the two biggest issues by far.

Mr. Howe, Mr. Karisch, you were very clear to just say Congress needs to act. Last week it was very specific. What we need Congress to do is to address *Flores* and TVPRA. Is that your opinion of what needs to be addressed?

Mr. HOWE. Yes. Agree to allow families to stay together through the *Flores* Agreement and then the TVPRA to allow the repatriation to noncontiguous countries.

Senator LANKFORD. OK. Mr. Karisch.

Mr. KARISCH. I completely agree.

Senator LANKFORD. How many individuals do we have coming in family groups that are coming from Mexico?

Mr. KARISCH. Very small number right now, Senator. I mean, the vast majority, 65—

Senator LANKFORD. Give me a ball-park guess. Is it 2 percent, or is this—

Mr. KARISCH. I would have to get those numbers for you, but 65 percent on the Central American families that we are seeing coming across the board, with a very small percentage of Mexicans with families.

Senator LANKFORD. So you are saying 65 percent? Is that what you said?

Mr. KARISCH. Yes.

Senator LANKFORD. Those are families from Central America?

Mr. KARISCH. Central America, Triangle countries.

Senator LANKFORD. So the other 35 percent of the folks are coming from where?

Mr. KARISCH. Mexico, but we are also seeing them from different parts of the world in the people that we apprehend.

Senator LANKFORD. You had mentioned just in your region—

Mr. KARISCH. Yes.

Senator LANKFORD [continuing]. There were 50 different nations represented.

Mr. KARISCH. Yes, sir.

Senator LANKFORD. I did not get the time period on that. Is that this fiscal year?

Mr. KARISCH. Just for this fiscal year, yes, sir.

Senator LANKFORD. So, in the last 6 months, you have seen 50 different countries—

Mr. KARISCH. Yes.

Senator LANKFORD [continuing]. Coming that are family units?

Mr. KARISCH. Not family units. Single adults who are trying to evade arrest.

Senator LANKFORD. OK. So the question becomes very difficult here on how to be able to manage the personnel.

Mr. Howe, you had mentioned before, when you pull people off of the land ports of entries to be able to manage what is happening between ports of entries, it has a real effect—4 hours of wait time for a truck to be able to get in and going all the way through an entire day and there are some trucks that never got processed that go in the next day, makes the next day even harder, obviously, as well to be able to move. What do you see as the snowball effect of having to be able to move people to between ports of entries to what is happening at the land ports of entries for long-term shipping and trade?

Mr. HOWE. Yes. Thank you, Senator. I think you have stated it, and that is we have pulled 545 frontline officers that normally work cargo and passenger vehicles. What we are seeing is what I mentioned in my opening remarks. We are seeing double the wait times in both privately-owned vehicle (POV) and cargo, and this is an immediate response to the crisis that we are seeing in between the ports of entry.

Senator LANKFORD. Mr. Karisch, the issue of fake families was brought up, individuals that are coming with a child that is not their own and not directly related to. How has that changed in the last year or two in what you have seen?

Mr. KARISCH. I will tell you that back in 2014, less than 1 percent of the males that were apprehended actually came with a child. Right now it is 50 percent.

Senator LANKFORD. Fifty percent?

Mr. KARISCH. Fifty percent of the males that are coming into this Country right now have a child with them. They recognize that because of the *Flores* settlement is that they are not going to be kept in custody. So, I mean, that shows you exactly how they are exploiting the system.

Right now because of volume, it is very difficult for us to spend a great deal of time in interviewing every single person.

Senator LANKFORD. So our laws are incentivizing people to be able to travel with a child. In other words, if you get in with a child and put a child through this trauma of all the travel and the transit, then you get a more expedited process when you get here?

Mr. KARISCH. Yes.

Senator LANKFORD. The question is on a child that is not related to the person or is very distant related to the person they are traveling with. What percentage of people or what kind of numbers are we talking about? Is this 2,000? 3,000? How many have we seen this year?

Mr. KARISCH. Senator, I will have to take that one back for the record. I do not have that offhand, but I can tell you that we have seen the fraudulent family units. We have seen the recycled children.

Senator LANKFORD. So when you say recycled children, that is a child that has come, somehow they were sent back over, and they are showing up again?

Mr. KARISCH. Yes. We have also seen—I talked about it earlier in the fact that the criminal organizations are making significant profits out of the smuggling.

People that are released with documents from our facilities, meaning that they can travel anywhere in the country, have been found in stash houses in Houston because they still have not paid off the criminal organization. So that shows you just how much control the smuggling organizations have.

In RGV, there are four specific areas where all family units are routed to. Every other zone in the sector is reserved for narcotics, so very controlled, very organized, very structured.

Senator LANKFORD. Mr. Chairman, this is an area that if we do not fix the law, we are continuing to look away from human smuggling, and that is something we should not look away from and should not ignore. What I keep hearing over and over again from every panel is they need Congress to act on these areas, or this never gets better.

Chairman JOHNSON. What I said in the opening statement, this is a problem here and now, and we need to act now.

I thought it was interesting. In last week's hearing, the witnesses said that the border is completely controlled on the southern side by the drug cartels. Nobody is moving through there without paying the fee, paying the ransom basically. So we need to recognize this, and we need to act. Senator Romney.

OPENING STATEMENT OF SENATOR ROMNEY

Senator ROMNEY. Thank you, Mr. Chairman.

Thank you, Ranking Member, as well for holding this hearing.

I want to say thank you to the individuals that you serve with. Your service and their service is a great tribute to our Nation and is critical to our national security and to our commitment to principles of human dignity.

I must admit that I am sure, like many people, deeply troubled about the vacancies at the Department of Homeland Security and the transition process that has been carried out with regard to those vacancies. I think it is dangerous, dangerous given what is happening at the border, dangerous given the broad responsibility that the Department of Homeland Security has for protecting our Nation. It is seriously troubling.

Let me turn with that, with something specifically that relates to your testimony. If there were no fence, if there were no Border Patrol agents, if there were no ICE, and we just said, "Hey, anybody that wants to come to this country, come on in," my expectation is you would have tens of millions, if not hundreds of millions or more people who would say, "I would rather live in the United States of America than somewhere else" and for many reasons. We are certainly not suggesting that, but I do believe that we need to put in place processes and measures legislatively, as the Chairman has indicated, but perhaps other ways as well to make sure that we do secure our border and that we have systems that do not attract people here in such huge numbers.

We have legislative fixes that need to come both short term and long term, and like Senator Portman who described the importance of E-Verify, I would underscore at least my personal view that mandatory E-Verify for hiring in this country is essential if we are going to turn off the magnet that draws people into the Country illegally.

But the challenges that you have each described today have suggested to me that we do need to have a legislative fix, and I am going to ask you not for data about something with which you have personally familiar, but instead with regards to legislation. What should we do? If you had the opportunity to counsel the entire Congress as to what action we should take to make sure that our border is more secure, that our children that are being separated are given better care, that we resolve this extraordinary challenge that we face? What legislative action do you think is action that we should be taking?

I will let you each, whichever order you would like to go in, respond to that question. I may have to leave before all your answers or given because of a vote that is under way that will be over in just a few minutes, but, please, why do not we begin with you, Mr. Karisch.

Mr. KARISCH. So I think it is addressing *Flores*. It is addressing TVPRA.

But I will also say this. We should have a system in place that for somebody who has a credible fear or asylum, that they walk into an embassy in those Triangle countries. Why not do your claim there? We get them out of this dangerous journey, whether it is come into the borders in Arizona or South Texas. It is to do away with this problem because, unfortunately, right now, as I previously mentioned, criminal organizations are the only ones who are benefiting from what is happening. They are making enormous amounts of money.

So we have to establish a process where we are continuing to admit those people that truly have a fear but yet eliminate a lot of the fraud that is going into some of the claims at this time.

Senator ROMNEY. Thank you.

Mr. HOWE. Yes. Adjusting *Flores* so the families can be held together and the TVPRA in order to allow return directly to non-contiguous countries.

Senator ROMNEY. Thank you.

Mr. TUBBS. I would absolutely support the same as far as the *Flores* and the TVPRA. Immigration as a whole, from workers' permits all the way up to obtaining U.S. citizenship, is something the U.S. Government needs to look at, just because of the history of our immigration laws. But I think besides the legislative fix, we also absolutely need to have a secure border. I mean, there is no reason—anything that crosses the border between ports of entry is illegal, and we as a U.S. Government should be able to control the border between the ports of entry.

We are always going to facilitate the flow of commerce at the port. We understand that, but between the ports of entry, we should be able to control that, period.

Senator ROMNEY. Yes. Thank you. Commander.

Mr. WHITE. First, you should in statute define the conditions under which it is permissible to remove a child from a parent, and I would submit to you that that should only be for the safety of the child or if the parent faces criminal charges other than misdemeanor 1325 entry.

Second, there needs to be a requirement that there be a process and documentation when children are separated from a parent, and parents need to have a right to appeal that.

Third, ORR needs the legal authority along with DHS, equal to DHS, to determine if a child is unaccompanied, so that if a child is referred to us who is truly accompanied and has simply been separated from a parent not for cause, we can refuse that referral.

Senator ROMNEY. Thank you.

Mr. CHERUNDOLO. Senator, on top of what my partners from DHS have already highlighted, I would say the one single piece of legislation that DEA would say would be very important to us is the class-wide scheduling of fentanyl.

We emergency-scheduled that fentanyl last year, and it expires in 2020, which could have a significant impact on not only DEA and our law enforcement partners in prosecuting those analogs, where the chemical makeup of the fentanyl has changed slightly, but it will also affect the Department of Justice prosecuting of those cases and motions going forward if the fentanyl were to come out of a scheduling, the emergency scheduling in 2020.

Senator ROMNEY. Thank you.

Mr. Chairman, I am going to go vote.

Chairman JOHNSON. Senator, before you go, I do want to point out that if you claim asylum, if you come to this country legally and you claim asylum, we give you a work permit after 6 months; is that correct? So I mean, E-Verify is, I guess, well and good, but when we are actually granting a work permit for somebody who comes into this country legally after 6 months, it is another one of those rewards that we provide, which I think we ought to seriously consider. Senator Harris.

OPENING STATEMENT OF SENATOR HARRIS

Senator HARRIS. Thank you, Mr. Chairman.

Today's hearing takes on new significance, obviously, in the wake of Secretary Nielsen's resignation. As I said in June 2018, I believe the government should be in the business of keeping families together and not tearing them apart.

The outgoing Secretary's willingness to implement the Administration's cruel and most counterproductive immigration policies and her willingness to frankly not be honest with Congress when questioned about these policies led me to call back in June 2018 for her resignation.

The government should have a commitment to truth and accountability. Under the Secretary's tenure, DHS had a track record of neither. However, she was reportedly forced out because she resisted the White House's desire to embrace even more extreme tactics from defying a court order and reinstating the cruel family separation policy to closing the Southern Border, a political stunt that would cause dire economic consequences to our country.

There are reports that even more turnover in DHS's leadership is yet to come. I believe a well-functioning Department of Homeland Security is vital to the safety and security of our Nation. At moments like this, Congress must exercise its duty to provide a check on the Executive Branch through oversight, through the power of the purse, and through our responsibility to provide advice and consent.

I urge my colleagues on both sides of the aisle to join together in helping to restore some of the much needed stability to the Department of Homeland Security and to respect and honor the work of the men and women who work there.

Commander White, I have some questions for you.

Mr. WHITE. Yes, ma'am.

Senator HARRIS. On March 6, CBP Commissioner Kevin McAleenan, now the Acting Secretary of Homeland Security, testified before the Judiciary Committee. I questioned him about reports that immigrant children in the custody of HHS and HHS's Office of Refugee Resettlement endured sexual harassment and assault. ORR received 4,556 allegations between October 2014 and July 2018, nearly 200 of which included very serious allegations such as staff watching children shower, fondling and kissing them and rape.

According to Justice Department data, sexual abuse allegations in shelters skyrocketed at the peak of the family separation crisis last spring and summer.

The Acting Secretary said that he was not aware of the allegations and that his colleagues at HHS and ORR are very committed to the children in their care, but when I asked him whether after learning of these allegations he believed he had a duty to voice concern about the safety of the children before transferring them to HHS's custody, he said that doing so was "the duty of the management and leadership of Health and Human Service."

Commander White, you are obviously here today representing the management and leadership of HHS. Do you agree with him, and what, if any, concern do you have about the findings? What are you prepared to do about it?

Mr. WHITE. So three things. First of all, thank you, Senator. I do want to talk—in fact, we probably should talk much longer than this forum will allow—about the protection of children in our care.

Let me start with one thing and be absolutely clear. If even one child is abused in ORR care, we failed that child.

Senator HARRIS. Yes.

Mr. WHITE. We failed that child. This is also true of every child welfare system in the United States and every foster care system in every State. Every time a child in care is abused, the system failed that child.

I do not excuse it. I do not permit it. Every time it happens, it is a call to do more.

Now, the statistics that have been reported do require clarification because we have a strict policy of reporting events, and many of these things that are reported as sexual abuse under our Prison Rape Elimination Act of 2003 (PREA) requirements are actually sexually inappropriate conduct by minors. This could include if a

minor makes a sexual gesture. That is reportable. If a minor uses a sexually charged insult for another minor, that is reportable.

There are, however, also cases at the upper end of the spectrum that include allegations of abuse by minors of each other and in some cases by grantee staff, never Federal staff.

Senator HARRIS. Sir, before you continue, are you describing theoretically what happens in the Department? Are you referring specifically to the 4,556 allegations that occurred between October 2014 and July 2018? I really would be interested and only am interested in the nature of the allegations that occurred during that period of time.

Mr. WHITE. Yes, Senator. I am talking about the actual reports, and many of these PREA reports are not in fact allegations of sexual abuse. They are allegations of sexually inappropriate behavior.

We have a universal reporting standard for our programs. They must report in writing within 4 hours of every reportable event. These do include some cases which resulted in criminal prosecution because we are required in every case to notify State, local, and Federal law enforcement and licensure authorities for full investigation.

Senator HARRIS. Can you tell me, sir, how many of the allegations involved abuse by HHS employees or other staff or adults working in these facilities whomever employed them? For example, I know you have contractors and private entities that are also handling or working with these children.

Mr. WHITE. Yes. There are zero allegations against HHS staff. If you give me just a moment—

Senator HARRIS. How many allegations are there against adults?

Mr. WHITE. There are allegations reported to ORR of staff on minors in fiscal 2018, 49 reports and 6 reports of other adults who were not staff—it could be someone who somehow got in the building or something like that—non-staff adult on minors for a total of 54 allegations in fiscal 2018.

These are among the cases that would have been reported to the FBI, OIG—

Senator HARRIS. So this is 103 in 1 year. How about for the total of those 4 years? How many adults on children allegations are there?

Mr. WHITE. No, that is, I believe, 55 in 1 year.

Senator HARRIS. You said 49 plus 54.

Mr. WHITE. No. Fifty-four total, 49 and 6, 54 total.

Senator HARRIS. OK.

Mr. WHITE. And 53 in fiscal 2017 of allegations of an adult reported to DOJ. These are cases we reported to DOJ.

Senator HARRIS. How many in 2016?

Mr. WHITE. In 2016 reported to DOJ, there were 62 allegations of an adult sexual abuse of a minor.

Senator HARRIS. OK. My time is running out. I would like you to report to this Committee how many total allegations were there between that 4-year period against adults, whomever employed them, regardless of whether the case was referred to DOJ or not.

I would also ask you right now to tell us whether you informed the Department of Homeland Security that these incidents were taking place in your facilities before or at any time during the

course of this family separation policy and obviously because I am curious to know whether the Department of Homeland Security was on notice that these things were happening in your facilities before they transferred the children to your care.

Mr. WHITE. So we will be providing a fully detailed accounting that will be forthcoming on our PREA reporting.

Second, I do not know whether our PREA reporting was conveyed to leadership at DHS. As a reminder, our programs are still safer than State foster care systems.

Senator HARRIS. Sir, I do not think that we want to compare what you are doing to State foster care systems which are notoriously horrendous conditions for many children.

Mr. WHITE. Precisely what I am saying and I say it again is that every time something happens to a child, we have failed that child.

Senator HARRIS. I agree with you.

Mr. WHITE. But the traumatization of children by separation does not need any child to have been harmed criminally by an adult. That act of the government entails harm to a child. So these are two important problems, but they are separate problems.

Senator HARRIS. Thank you.

Chairman JOHNSON. Senator Harris, you raised the issue of rumors of reinstatement of the zero-tolerance policy. I am not aware of that as a policy. I am aware of the rumors in the press.

Let me just state for the record, I would be completely opposed to that. My guess, that is a majority, if not a unanimous view of the Members of this Committee.

Let me just cite you some reasons. Commander White, I think you would say that—

Senator HARRIS. I referred to a family separation policy.

Chairman JOHNSON. Yes, family, zero tolerance, whatever you want to call it, results in family separation.

I think you had stated that during April, May, and June when that zero-tolerance policy was in effect, HHS was pretty well overwhelmed by this. Would you say that is true?

Mr. WHITE. That is correct. Both our total capacity and specifically our capacity to serve very young children, since separation disproportionately results in our getting babies, toddlers, and young children.

Chairman JOHNSON. So, again, I am hoping members of the Administration, if they are actually considering this or listening to that testimony—and as Senator Peters pointed out, I like numbers. So here are the numbers. During April, May, or June, on average, we apprehended about 9,500 individuals as a family unit, about 9,500.

The last 3 months, which again shows the growing crisis at our border, there has been 29,000.

So if HHS and CBP were overwhelmed back in April, May, or June 2018 with 9,500 per month, this is three times worse, and my guess is this is going to continue to increase in severity.

Again, this is a crisis in the here and now. We need legislation, and I would like this committee to lead in that effort. Certainly, as Chairman, I will be leading and hopefully working with every member of the committee to pass the legislation that actually fixes this problem in the here and now. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Gentlemen, welcome. Thank you very much for being here, for your work.

My colleagues have heard me say this before, so bear with me, but we all have sources that provide us with guidance in our lives and values that we hold and the way we try to behave and act. There is, I believe, a bipartisan Bible study that meets in the U.S. Senate every Thursday, about six or seven of us who need the most help. We meet with the Chaplain of the Senate who is a retired Navy admiral. He was chief of chaplains for the Navy and the U.S. Marine Corps (USMC).

Almost every Thursday when we meet, he reminds us of a passage in the Book of Matthew that deals with the least of these. "And when I was hungry, when I was thirsty, when I was naked, when I was a stranger in your land, did you welcome me?" He reminds us of the moral obligation that we have to the least of these, including the stranger in our land.

He also reminds us of the greatest commandment of all, and that is the golden rule, treat other people the way we want to be treated, which ironically is in every major religion on the planet, every one in one form of the other.

So when I approach a dilemma, a challenge like we have on our border, I try to keep those words in mind going forward.

I also am somebody who focuses like a laser on root causes, not on symptoms or problems, but what are the root causes, and as you know, the root causes for a lot of folks coming into our country from Honduras, Guatemala, and El Salvador are lack of economic opportunity and hope and Northern Triangle, prevalence of violence and crime in those three countries and also corruption. Those are the three drivers.

The reason why we created the Alliance for Prosperity, with those three buckets—lack of economic opportunity and hope, crime and violence, and corruption—is because that is what we gathered from people coming to us saying, "This is why I am leaving. This is why I do not want to stay in my country."

Ironically, I was just down in a congressional delegation (CODEL) about 6 weeks ago to see how we are doing with the Alliance for Prosperity, and I was actually pretty encouraged by the work that is being done. I think it is important that we not walk away from it.

The President I think is intent on ending funding for those programs, which would be a huge mistake.

I have been sitting up here writing some notes to myself about how to reduce the likelihood that people will feel compelled to leave their countries and to come to ours. For me, a big answer is fully execute and execute well the Alliance for Prosperity, modeled after Plan Colombia, which has worked, and I like to say find out what works. Do more of that.

The second question I have for people who do leave—and we have been messaging countries on those—leaders in those countries have been messaging to their people about the horrors of transiting Mexico and trying to get into this Country and saying it is not going to work well and kind of discouraging people from coming.

That is not working so well because they are coming in ever larger numbers, as you know.

So I am trying to figure out what is the most humane way to deal with the families that make it to our borders, and is there a way that we can actually keep the families together, expedite the amount of time, reduce the amount of time that they have to wait to make an initial judgment as to whether or not someone who is seeking asylum, asking for asylum, really is in that kind of danger back in their native land? There is a way to do that, and while we are doing that, quickly, provide for a safe place for these folks, for these families to stay.

So let me just start with that. Is that something that we can do, to make that initial decision? Say a hundred families are coming across. Making a decision, I do not think we could do it like that. Maybe we could, but just to say is there really a case for asylum? Are we really convinced maybe upon initial screening that somebody is there really truly because they need asylum or not? If they really and truly need to, they are brought in for a more in-depth screening, and their families are taken care of. We do not separate the kids from the families.

Maybe that is something we are doing. I am not aware of it, although I think there is the initial screening, but give me some response to that, Greg.

Mr. CHERUNDOLO. Senator, since Title 21 is our sole focus on the enforcement of the drug laws, that probably would not be best for me to answer that.

Senator CARPER. Yep. Let me go to Commander White.

I used to be a commander in the Navy.

Mr. WHITE. So I will have to defer to DHS colleagues on family separations.

I can tell you that over the years, the reasons that unaccompanied children give when they are in our care for why did you come to the country as astonishingly the same over time, and the top three reasons always are because they feared violence in home country, because they lacked economic and educational opportunities in home country, and because they had parents or their family here in the United States they wanted to be reunified with. This seems to be a standard.

But as regards family units, that is something the DHS colleagues would need to speak to.

Senator CARPER. Mr. Tubbs, any thoughts?

Mr. TUBBS. Absolutely. I agree with your statement that we absolutely have to work with our foreign counterparts to work at the root causes of why people are leaving the country.

I can also say that in my 24 years of working for Homeland Security and its previous agencies that 9 of those years, I spent foreign-stationed in the Dominican Republic and Mexico. We do need to work at the root cause. We do need to work with our foreign counterparts, but we control a very small portion of that. Despite the help that we give them, we do control everything here in the United States.

While we work with our counterparts, I think we also need to focus very close on the laws that we have here and the capabilities

that we have to secure our border and we as HSI to conduct our criminal investigations to dismantle those organizations.

Senator CARPER. All right. Mr. Howe.

Mr. HOWE. Thank you, Senator.

Agree we should work to have families stay together. Of course, the *Flores* Agreement, the longest being held in the 20 days, so adjusting the *Flores* Agreement allowing those family units to stay together through the entire process is the way to go.

Senator CARPER. The entire process, I think the backlog is like measured not in days, weeks, months, but actually maybe even years, and that gets to be, as you know, pretty expensive and frankly not very humane. but thank you. Mr. Karisch.

Mr. KARISCH. Yes. But I will also add, Senator Carper, that when you detain, you are going to expedite a hearing.

Ultimately, if the person is granted relief, they are released into the country. If they are not, they are immediately repatriated because at the end of the day, you do need a consequence. Otherwise, you are just going to see that flow increase.

During my oral testimony, I read off the claim from the Central American who communicated back to his associated as "This is the quickest way. Bring children. You are not going to be detained." So we have to develop a process that we have done in the past.

The Brazilians that were here in the 1990s, 2000s, the way we stopped the problem is detaining families together. You had your opportunity. You have to go before an asylum officer or immigration judge. If you were granted relief, you stayed. If you were not, you were immediately repatriated.

We can always improve efficiencies in the government. This is an area for us to do it, but we also need to have that consequence.

Senator CARPER. Thank you.

I talked with the Chairman and the Ranking Member in the last couple of days about the idea of people within these three countries, the Northern Triangle, with asylum claims of being able to bring those asylum claims not in the United States at our border, not in Mexico, but within those three countries.

I am going to ask you to respond for the record as to whether or not you think that Secretary Nielsen, has been an advocate of doing that, as you probably know. But I am going to ask you to respond for the record as to whether or not that is an idea that makes sense. Thanks.

Thanks, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Carper. Senator Sinema.

OPENING STATEMENT OF SENATOR SINEMA

Senator SINEMA. Thank you, Mr. Chairman.

During this critical situation on our border, it is important to hear directly from the Federal agencies who protect Arizona's border and our family and community. So I appreciate all of the witnesses for coming and speaking with us today.

As I mentioned in our hearing last week, Arizona faces significant security, economic, and humanitarian challenges with these recent migration trends. Congress and the Administration must focus on ideas and initiatives to help improve the situation, and I

am glad that the President heeded the calls from me, from border experts, and many other Members of Congress to not close the Southwest Border.

But last week, we heard from outside experts about their ideas to secure our ports, improve coordination with local non-governmental organizations (NGOs), deploy critical technology between our ports, and improve workforce morale, and I look forward to hearing more about a frontline perspective on those ideas today.

As always, I am committed to working in a bipartisan way to finding solutions that keep families and communities safe in Arizona and to treat migrants humanely and fairly.

So my first question today is from Mr. Howe. I do not agree with CBP's decision to transfer officers away from Arizona ports of entry. Our ports have struggled with high vacancy rates in recent years, and that has led to the assignment of temporary duty officers. I understand that CBP faces significant strain on its personnel, but our perspective is that this decision hurts trade. We worry about it impacting security.

So I want to know what analysis did CBP conduct regarding removing these temporarily assigned officers from the ports of Arizona. Can you share that analysis with my office?

And given that these ports were already understaffed, how does this decision not negatively impact security or flow of trade?

Mr. HOWE. Thank you for the question.

The initial response that we provided, our Border Patrol colleagues, was to support them in this migration crisis. They were overwhelmed, are overwhelmed. So the decision was made to provide them the officers that they could use to put their agents back in their law enforcement activity.

So 545 officers from the frontline, a decision was made to address this crisis. We knew there would be impact. When Commissioner McAleenan had his press conference in El Paso, he mentioned that, so 545 frontline officers, 300 from Laredo, 194 from El Paso, and then 51 from San Diego.

As you pointed out, we did not pull any from the Tucson field office, but the 75 temporary duty travel (TDYs) that we had identified, we did not send them for assistance.

So we know there is going to be impact. We see that every day. We see the backups in both the personal vehicles and the cargo, but this is a crisis that we are addressing with assistance of Border Patrol.

Senator SINEMA. Last week, we heard about the need for additional surveillance and detection capacity between our ports of entry. We know that the largest drug busts and interdiction occur at our ports of entry, but there is still significant trafficking for narcotics and other threats between our ports of entry.

So my question for Mr. Karisch, what type of sensors do you think are most useful for agents in the general patrol duties? Do we need more cameras, more radars? Do we need more unarmed aircraft systems (UAS) or something that I have not mentioned yet?

Mr. KARISCH. All technology has helped. CBP has made a tremendous investment in technology over the last few years, but we

also need to have relocatable technology because traffic patterns will shift from one area to another.

We saw it in Arizona where I was previously assigned. It is having technology that is going to help us with greater situational awareness.

Right now in South Texas, what I see the problem as is we do not have any technology that is foliage penetrating. So people get into the brush areas. Whether it is the creosote cane, whether it is the sugarcane, whether it is the other brush that is there, it makes it hard to detect. So it is a combination of different systems that we can actually apply on to the border is to act as that force multiplier for us.

But, ultimately, no fence, no piece of technology is going to make an arrest or an interdiction. That is going to be done by men and women who are out there. So it is important also as to be able to bring on additional personnel who can actually help us with that.

Senator SINEMA. My next question is also for you, but I would like to hear the thoughts of other witnesses if they have ideas as well.

Last week when we were hearing from experts, they were talking about the importance of local offices forging close connections with the NGO's and local community leaders. As you know, we are facing a struggle in Arizona with the release of migrants and need to improve communication with our local NGO's.

So my question is, in your experience, what do you find works best to help build those close relationships at the local level, and are there any tips that we could utilize when I am able to go back to my State in the next 2 weeks to try and figure out a better solution for the crisis we are facing?

Mr. KARISCH. So I work closely with a lot of the NGO's out there in Arizona at the time, Juanita Molina and a number of other people who I had the privilege of working with, but also even south of the border. During the time when they were speaking about a caravan coming up either to Arizona or to California at the time, it was sitting down with NGO's across the borders to figuring out exactly how many shelters they could open up, how they could help the ports of entry and organizing the number of people that actually showed up at the bridges. So that engagement does happen.

We have very strong programs in the Border Patrol, border community liaison agents who get out there and speak to NGO's. We work with them very closely in South Texas. Sister Norma, right now she is helping us with the overflow and the people that we are releasing from Border Patrol custody to the respite centers. So it is working very closely with them to try to figure out how they can help the Federal Government but also expanding that into other areas.

Senator SINEMA. I would like to follow up with you after this hearing. I will be back home in my State over the next 2 weeks during the spring period and intend to host a meeting to bring NGO's together with our local officers to help provide more close communication.

As you know, we have had recent unexpected releases into the community that have been troublesome in Phoenix, Yuma, and in Tucson.

If there are others on the panel who have thoughts on this question in particular, I would appreciate it.

Mr. TUBBS. I would like to provide a response to your previous question, if I could.

Senator SINEMA. Yes, that would be great.

Mr. TUBBS. I am stationed on the border. I am in Laredo, Texas. Specifically, if you look at what DHS does on the border, it is really a whole-of-DHS effort, and when we look at the transnational criminal organizations that are responsible for bringing aliens and narcotics, weapons across our border, we have our uniform presence that deter, that detect, that do the seizures. I know that you asked what equipment that they might need and what personnel, but what I would ask is Homeland Security Investigations because we do a great job in deterring and detecting.

But, ultimately, if we want to dismantle those transnational organizations and criminally prosecute them, criminally detain them, criminally forfeit their illicit proceeds, that whenever you look at providing personnel and equipment to our uniform partners that we work with every day, that you also look at Homeland Security Investigations because ultimately we need to dismantle those organizations and have them pay the ultimate price of prosecution and detention.

Senator SINEMA. I appreciate that point. Thank you.

My time has expired. Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Rosen.

OPENING STATEMENT OF SENATOR ROSEN

Senator ROSEN. Thank you. Thank you, Mr. Chairman, and thank you all for being here today.

This weekend, while I was visiting my home State of Nevada, President Trump called the U.S. asylum process a “scam.” With respect to immigrants, including asylum seekers, the President said, “We cannot take you anymore. Our country is full. So turn around.” Our country is full? Turn around? As a granddaughter of Jewish immigrants from Eastern Europe, I cannot help but think about the time in the middle of the 20th Century when the United States used security concerns as an excuse to turn away thousands of refugees fleeing Europe or about the MS St. Louis ocean liner in 1939 was made to turn around upon reaching American shores.

I cannot help to think about the many families today from El Salvador, Honduras, and elsewhere waiting in squalor outside our ports of entry because they are fleeing unimaginable violence and can find safety and freedom coming here to the United States.

Yesterday Cable News Network (CNN) reported that the President told agency personnel to close the ports of entry at the Southern Border. The President told border agents in Calexico, California, not to allow any migrants into the country.

In my home State of Nevada, the University of Nevada, Las Vegas (UNLV) Immigration Clinic has clients from Central America who are teenage girls, teenage girls recruited as gang girlfriends, as young as 12 and 13, meaning they face gang rape, possible death on a regular basis.

Under U.S. law, our women and girls like this who are fleeing violence, they are entitled to protection and to at least apply for

asylum. In fact, I know this to be true. A person who can prove she would be persecuted because of race, religion, nationality, political opinion, or particular social group is entitled to asylum under U.S. law.

I assume, gentlemen, that you are aware that just yesterday, a judge in California issued an order blocking the Trump administration from requiring asylum seekers to remain in Mexico.

So, Mr. Karisch and Mr. Howe, if the President were to instruct you and your agents to deny entry to people seeking asylum at the border, in your opinion do you think that violates United States law?

Mr. KARISCH. I will start, Senator Rosen, by saying this. If they cross between the ports of entry, they are violating U.S. immigration law, so they are going to be placed on arrest, but that still will not stop them from making an asylum or credible fear claim. But effecting an entry into the country between the ports of entry, they are in violation of the law, and they will be arrested.

Senator ROSEN. Mr. Howe.

Mr. HOWE. If they enter the United States across the boundary line at the port of entry and they claim asylum, we would be bound to hear that asylum claim.

Senator ROSEN. So my follow up question is, Would you follow instructions like those from the President even knowing, Mr. Howe, that they are going to violate U.S. law?

Mr. HOWE. We know what the law is, and our attorneys are here to advise us. They work for Customs and Border Protection, DHS, so I will follow the guidance that we receive from our attorneys.

Senator ROSEN. So knowing that we have this challenge, I guess I will pose this in another way. Can you describe to me the concerns you have with implementing this Administration's current policies?

Mr. KARISCH. Ma'am, we have taken an oath of office to defend this country. Our officers every day go out there and perform a job. It does not stop them from addressing the asylum, the credible fear, the different things that they have.

We are parents. We are grandparents. Our officers do this, our jobs, as humanely as we possibly can, but understanding is that we do have laws in this country. People have to abide by those laws. Otherwise, we stop being a sovereign country.

We still feel the heartfelt issues of everyone that we encounter, but we still have to put them through the process. It will not stop them if they do have, in fact, a credible fear. That they will have an opportunity—

Senator ROSEN. So you are saying if someone presents themselves for asylum, you will take them in, regardless of what the President has instructed you to do?

Mr. KARISCH. If they enter the United States between the ports of entry, they will be apprehended. That will not stop them from making an asylum claim.

Senator ROSEN. Thank you.

I would like to follow up a little bit. Last year I toured a tent city in Tornillo, Texas, of course, near El Paso, where unaccompanied children and separated children were held. I saw teenage children separated by gender, slept in barrack-like conditions, ac-

cess to legal services limited, and phone calls to relatives or possible contacts were limited and monitored.

So, Mr. Howe, I guess I want to ask you again. Do you have knowledge about the Tornillo facility that it was owned or managed by a for-profit company?

Mr. HOWE. I think I will defer to the Commander.

Senator ROSEN. Commander.

Mr. WHITE. Yes, ma'am. So the Tornillo Temporary Influx Facility was operated by HHS, by the Office of Refugee Resettlement. Temporary Influx Facilities, that one was operated by a nonprofit grantee who also performed services for us operating State-licensed permanent shelters around the country.

Temporary Influx shelters, such as the one that is open now in Homestead, are not our first choice. Our first choice is to have State-licensed permanent shelter capacity. The fluctuations that we see—

Senator ROSEN. You are saying they are for-profit institutions? Are they for-profit institutions that we are leasing these services out to?

Mr. WHITE. The Tornillo site was operated by a not-for-profit grantee.

Senator ROSEN. In your estimation or according to any knowledge that you have currently, are some of our detainees being held in for-profit institutions?

Mr. WHITE. The Homestead facility, the children who are sheltered at Homestead, we are getting staffing services there by a Federal contract, and the entity that won in the contracting process is a for-profit.

Senator ROSEN. Thank you.

I yield back.

Chairman JOHNSON. Thanks, Senator Rosen.

Before I start my questions, certainly in my quest, and I think in this Committee's quest, to develop the information required to solve this problem without the reality, one of the questions I have had is, What is asylum law? What is a valid asylum claim?

What I would like to do is quickly read from—one of the better explanations for this comes from Congressional Research Service (CRS), a paper written in January of this year, and let me just read it, and I will enter it into the record.¹ To qualify for asylum, an applicant has the burden of proving past persecution or a well-founded fear of future persecution on account of race, religion, nationality, member in a particular social group, or a political opinion. The applicant must show that one of these protected grounds "was or will be at least one central reason for persecuting the applicant." In the absence of past persecution, an applicant can show a well-founded fear by presenting evidence of a reasonable possibility of future persecution.

Here is a key point: The applicant must also show persecution by the government or groups that the government is unable or unwilling to control, and for purposes of showing a well-founded fear, that applicant could not reasonably relocate within his country to avoid persecution.

¹The paper referenced by Senator Johnson appears in the Appendix on page 197.

Again, we will delve more into this, but I wanted to get that on the record.

I am very sympathetic with a lot of people talking about setting up asylum claims in the home country. I just find a disconnect. First of all, from my knowledge, asylum can only be claimed once you are in the asylum country, the safe haven. So if you are asking for protection in your home country, that is refugee status, and we have different laws and controls over a number of refugees. There are no controls in terms of the people we let in in terms of asylum.

Also, if you can claim safely asylum in your country and stay there, you are basically not qualifying for asylum because your—the government can protect you enough to have you claim asylum.

So I am just trying to figure out the disconnect, what is going to work, what is not going to work, but I think it is extremely important that we understand exactly what these asylum standards are. I would argue this is probably the main reason why 85 percent of the claims are denied.

Commander White, you talked about in your testimony three reasons. Feeling violence. There you go. There is a valid asylum claim, but economic opportunity is not. Family unification is not. As sympathetic as we all are for those individuals, it is not a valid asylum claim, and we have a process now that whether it is valid or not, we let you in the country, and those individuals are staying, which is just fueling the crisis. It gives you the numbers. We talked about the 9,500 up to 29,000 over the 2018 period versus the last 3 months.

Again, this is a complex problem. The solution for the here-and-now problem is we have to change these laws. We have to reflect the asylum.

Again, I agree with Dr. Selee from last week, where if we can rapidly adjudicate and make a determination is this a valid asylum claim or not and then humanely return people, just like we did with Texas Hold 'Em with Brazilians, that will accomplish our short-term goal of reducing that flow and hopefully converting this into a legal process.

I come from a position, certainly in Wisconsin, there is not one manufacturer that can find enough workers. From my standpoint, we need more legal immigration tied to work.

So, again, I just appreciate—and I will say again on the record—the strong attendance of Members of this Committee, the excellent questions. I think we are getting to the reality of the situation. I think we are hopefully creating a desire to do something about this, certainly a recognition that the Administration cannot do it on their own. They are simply not capable—what executive actions they take are overruled by the court.

So this is on our lap. The ball is in our court. We have to fix this, and I am really looking forward to dealing with all the Members of this Committee to start solving the problem.

I would like to talk about the well-oiled machine because I think it is really important that we recognize this is not just a group of individuals deciding to wake up one morning and they make their way into—this is a very organized effort.

So, Mr. Karisch, can you talk a little bit about your knowledge of that? I will go to Mr. Tubbs because I think you have probably

done a lot of investigation on this. Really talk about how well organized this is.

You asked one of the pieces of information. I think it was the reporter had done an estimation, thinking it was probably about \$440 million worth of profits. That is just a back-of-the-envelope calculation, the fee times the number of people coming in here. And the drug cartels—or I guess it is a split-off business now. Human traffickers kind of flowed from the same process and realizing this is a higher profit in many cases and a lower risk, form of trafficking than even drugs.

But can you just talk about the well-organized effort here?

Mr. KARISCH. So very well organized, reaching back into places like Central America, and of course, Mr. Tubbs will be able to talk with a lot more certainty.

But from the brush guides to the people who move individuals up to the border area, from the criminal organizations that are making the tax—we call it “el piso”—down on the Southwest Border, long gone are the days where you can simply decide that I am going to cross in Juarez and into El Paso.

Now you are told where to cross. You are charged money, and refusal to pay money has consequences, so very orchestrated. I would say that the smuggling of people has even become more lucrative because it is an endless commodity. On the drug side, if it sees it is going to be destroyed, you have to go produce more. They have the abilities to continuously bring more people, also recruiting younger smugglers, juveniles, because they know that the Federal Government cannot prosecute them, so a lot of money going into this.

But the cartels have the ability to shut down bridges, to re-divert caravans. That is the type of control that they have on the south end of the border at this time.

Chairman JOHNSON. So you agree with the testimony last week that the Southern Border is completely controlled—or the Southwest Border is completely controlled on the south side of the border, on the Mexican side, basically completely controlled—

Mr. KARISCH. Correct.

Chairman JOHNSON [continuing]. By the drug cartels.

Mr. Cherundolo, you talked about the enormous profits in fentanyl. I think you said something like \$5,000 is worth \$1.5 million worth of profit. That kind of profit motive, if there is a demand, there is going to be a supply for it, correct?

Mr. CHERUNDOLO. That is correct, Senator.

Chairman JOHNSON. But cannot we almost say the exact same thing of human trafficker as well, where we have a system that is incentivizing and rewarding, that can be so easily exploited by a really well-organized effort, people that understand our laws, know exactly how they are working, setting up a transportation system, using buses, other transportation? As long as this remains profitable, it is going to continue and probably grow, right? I mean, is not every business venture’s goal to grow and become more profitable?

Mr. TUBBS. Absolutely. Again, as we talked before, these human smuggling organizations are very organized. You have recruiters in the home country. You have transporters in the transit countries.

You have the stash houses along the way, the individuals who get them across the border, plus their methods of money remittances, laundering their proceeds as well. And human smuggling has become almost or coming to the point as profitable as narcotic smuggling.

We were specifically talking about human smuggling from Central America, but I can tell you specifically in Laredo, Texas, in 2017, we had an issue that Border Patrol had intercepted approximately 200 Bangladeshis, and then in 2018, almost 700, where we as HSI took on those numbers. We investigated that organization, ultimately arrested the leader of that organization in Monterrey, Mexico, the government of Mexico, and returned him and brought him to the United States to face prosecution. There has been zero Bangladeshis since, but they were paying up to \$27,000 per alien for Bangladeshis, \$2,000 to \$7,000 for Central Americans. It is a very profitable business, and they are coming here for a reason. They are coming here because—specifically the Central Americans to work, and that is one of the reasons that we are increasing our work site enforcement on the interior to take away—

Chairman JOHNSON. I think the one thing, we had former CBP Chief Morgan on our panel last week. You always hear 90 percent of drugs flow through the ports of entry. My question has always been, well, how do we know that? I mean, we do not even know really what is coming through between the ports of entry.

And is not it true that when you have, again, over 100, groups of 100 this year—and that is a dramatic increase from prior years. Again, in a very well-organized effort, it just makes sense you use those 100 people as a diversion over here. You overwhelm the system. It requires all kinds of CBP officer to converge and take care of sometimes six children and that type of thing. It makes it pretty easy for somebody to sneak across with either drugs or high-value or a higher-paying customer in terms of human trafficking, correct?

Mr. KARISCH. Senator, I will add to that. In January of this year, we had a 705-pound seizure of cocaine coming into the United States between the ports of entry. In close proximity to that, there was a group that was sent across with 170 individuals. So that is definitely a tactic and technique that the criminal organizations use. Once again, it is to tie up our resources, and then they exploit the gaps on the line.

Chairman JOHNSON. Final point before I turn it over to Senator Portman who has some more questions is—and I think, Commander White, you talked about the death of any child, the abuse of any child is a tragedy.

But I do want to give Mr. Karisch an opportunity to talk about—because I know in your testimony, you talk about the thousands of lives that CBP has saved because that is now your mission as well, and the medical resources were surging to the border. People are coming to the border having taken a very dangerous journey, some of them almost on life support.

I just want to give you the opportunity to talk about how much time and attention CBP is putting into saving every person, the humane treatment that you are providing, and again how this is an overwhelming task.

Mr. KARISCH. I appreciate that, Senator.

Every summer especially, but even in the winter, from Brownsville, Texas, all the way to San Diego, Border Patrol agents are deployed into areas to rescue people.

I have seen agents in Del Rio jump in the rivers to save children that their mothers had let go because they could not keep up with the currents.

I have seen our agents rescue people off of mountaintops in Arizona. I have seen our people rescue people in South Texas. We do that on a regular basis.

Our most important thing is the preservation of life. A great man once told me that simply entering the country illegal should not equate to a death sentence. So we provide those resources.

We have units of agents who have been out on the border, our Border Patrol Search, Trauma, and Rescue (BORSTAR) units, but we also have Emergency medical technician (EMTs). We deploy a lot of EMTs out there, which is important because during the summers, we will see an increase in the number of rescues that our agents have to make out there, and it is a mission also that we take with great responsibility. But that is in addition to everything else we are doing, and what suffers is the fact that you still have bad people and things that are coming through the border.

Fifty-three percent of the marijuana that is intercepted along the entire Southwest Border by Border Patrol is made in RGV. We have had increases in heroin. We have had increases in cocaine. So there are other commodities, illegal substances also that are coming through between the border, but it is just a heavy investment of all of the things that we have to do in securing our border but also preserving life.

Chairman JOHNSON. Does anybody want to just confirm what Mr. Karisch talked about in terms of the efforts of CBP to try and save lives or rebut it? Mr. Howe.

Mr. HOWE. We are seeing the same thing at our ports of entry. We are seeing the migrants that are claiming asylum that are medically in despair in most cases, and in my oral testimony, we take them to the hospital right away. So we go through great efforts to care for them and to ensure that they are safe.

Chairman JOHNSON. Anybody else want to speak to that?

[No response.]

Senator Portman.

Senator PORTMAN. Thanks.

I again want to start by thanking each of you for your service. This is such a rare opportunity to speak to a bunch of experts who are in the trenches every day dealing with these issues that I wanted to come back for a second round, and I appreciate the Chairman allowing me to do that.

First, on the drug issue, I did not have a chance to speak to this earlier because there are so many topics, but, Mr. Cherundolo, you talked about the fact that fentanyl is now coming across the border, and we are having more seizures of fentanyl.

Typically, as you know, it has been coming from China through the mail. My understanding in talking to Customs and Border Protection, that still is the preferred method for these traffickers. So still most of it is coming in through our own U.S. mail system be-

cause we do not have the tracking that the United Parcel Service (UPS) and Federal Express (FedEx) and others do.

We are now putting that in place under the Synthetics Trafficking and Overdose Prevention (STOP) Act. I am disappointed it has not been done more quickly, but it is moving to the point where I think we will have about 100 percent from China within the next several months.

But do you think there is more fentanyl being shipped now into Mexico then coming across the border, and if so, why is that happening? Why would not they simply do what they have been doing, which is send it to a Post Office box in the United States? Is it partly because of the STOP Act, which now will require the post office to have that data, where it is from, where it is going, what is in the package, on all the packages, which it had not had until now, or is there some other reason that they would want to ship it into Mexico?

Again, my presumption is that it is not being produced in Mexico. There were two instances I think where we have found some production of it in the past, but my understanding is both of those have been shut down. So what is going on? Can you give us the dynamics of that, and how can we be more effective in stopping it?

Mr. CHERUNDOLO. So, Senator, certainly the STOP Act is a welcome tool, and it has helped. The two primary methods of fentanyl coming into the United States, one are by parcel shipments into the United States, but again coming across the Southwest Borders. Many seizures as a result of the investigations DEA is conducting and the investigations our counterparts are conducting, we are seeing an increase in the number of instances where large seizures of fentanyl are coming across the Southwest Border.

The purity levels that we look at differ slightly. What we see coming from China tends to be a more pure form of fentanyl, but certainly everything from the investigations we are conducting indicates that Mexican cartel organizations are increasingly dealing in fentanyl, particularly in the form of making them into counterfeit drugs, into pills.

Senator PORTMAN. That has been happening, but are you telling me today that we are now seeing evidence of manufacturing fentanyl, the synthetic opioid in Mexico, or is this being manufactured still as chemical companies in China and then shipped into Mexico?

Mr. CHERUNDOLO. We are certainly looking at the production of fentanyl in Mexico and fearful that the transition from production of methamphetamine, which is very prevalent in Mexico, to fentanyl will occur, and that is a—

Senator PORTMAN. You have not seen it yet. You have not proved it yet, but you are concerned about it?

Mr. CHERUNDOLO. Certainly, the two instances that you talked about are the instances we see, but the re-tableting and the fentanyl being—

Senator PORTMAN. Making it into a tablet that looks like a prescription drug, an OxyContin or something?

Mr. CHERUNDOLO. But the precursor chemical is coming into Mexico too is what we are—

Senator PORTMAN. Yes.

Mr. CHERUNDOLO. We specifically started a sensitive investigation unit with our Mexican counterparts that addresses the precursor chemical flow into Mexico for the production of fentanyl.

Senator PORTMAN. It is something to keep an eye on because, as we saw, it just overwhelmed us, and it is by far the number one killer now among the opioids. And opioids are the number one killer in the country. In my home State of Ohio, we are getting devastated still by fentanyl.

I will say that in a lot of areas of Ohio, we have made progress. We actually have the highest reduction of opioid deaths from overdoses of any State in the Country in the last year. That is not saying much because we started at such a high level, but what we are seeing instead now is crystal meth coming in from Mexico in a very pure form.

I was told by a law enforcement official recently, it is less expensive than marijuana by weight on the street in Columbus, Ohio.

That crystal meth is coming almost exclusively from Mexico; is that correct?

Mr. CHERUNDOLO. That is correct. The production of methamphetamine in the United States is very limited to what we call mom-and-pop or shake-and-bake labs that are lower amounts. The larger seizures of methamphetamine we see coming into the United States as a result of our investigations are coming from labs that are producing the methamphetamine in Mexico.

Senator PORTMAN. It is cheaper and more powerful than the stuff that used to be made in the basement or the trailer, and that is what we are seeing in Ohio too. We are not seeing any environmental damage caused by that, but we are seeing a much higher grade, higher quality, more devastating drug, cheaper.

Mr. CHERUNDOLO. That is correct.

Senator PORTMAN. So what do we do about it? In the appropriations bill, we put unprecedented amount of money into this screening technology to be able to look through a truck, for instance.

We have also put in place the INTERDICT Act in addition to the STOP Act. We are trying to get more funding into personnel because the expertise that you guys need to have to be able to identify these products and safely deal with it—how is that going, and what should we be doing?

Mr. CHERUNDOLO. Certainly, for all of us at the table—I do not want to speak for everybody, but I think our resources from the personnel standpoint is a critical issue, particularly from the DEA standpoint. We continue to hire to fill vacancies, to have additional agents to do the investigations.

But our relationships with our foreign counterparts are critical. The developing relationship, like I said, with the sensitive investigation unit to identify chemicals flows into Mexico, particularly from China and from other countries throughout the world, are critical and key issues for us, but that partnership with our foreign counterparts is critical. And it is ever evolving.

With the changeover in the Administration in Mexico, we are still working our way through how our relationships will develop, and continuing to strengthen those relationships is critical for our way forward.

Senator PORTMAN. Mr. Howe or Mr. Tubbs, thoughts on this? I mean, my sense is 90 percent of the heroin coming into Ohio comes across the Southern Border, almost 100 percent of the crystal meth now coming in across the border, increasingly more fentanyl, still mostly coming from the mail, but more of it now coming in. What would you do with this funding we have provided? What is the most effective way?

As the Chairman said, some of it is coming through the ports of entry, no question about it. The majority has been traditionally because it has been brought through with vehicles, but once that is closed down, my sense is they are now shifting more to places along the border where they can have access between the ports of entry. Is that accurate? Can you give us a rundown on what you are seeing?

Mr. HOWE. Thank you, Senator.

Yes, the \$564 million, giving us that Multi-Energy drive-through system is going to increase our capability. We will be able to stop the narcotics from coming in.

Thank you for the ST^OP Act. We are seeing improvement in that advance, that information coming from China and other countries. I think as we work to fully implement that and also the money you provided, the \$45 million, for NII for our mail facilities and more canines, that is all going to be paying for it.

Senator PORTMAN. Excellent. Mr. Tubbs.

Mr. TUBBS. As I had said prior, as we look at the personnel and the resources that go to CBP for the interdiction, as those interdictions increase, our criminal investigations are going to increase, our responses are going to increase, and we, as HSI—ultimately what we are looking at along with working with our counterparts with DEA is identifying those transnational criminal organizations and working with our foreign counterparts and our Sensitive Investigative Unit (SIUs) and our TCIUs, so we can truly dismantle those organizations. And that is working with our counterparts.

Senator PORTMAN. We talked earlier about push and pull factors, and there is no question we need to do more to keep the demand down here in this country because the prevention efforts are ultimately going to be most successful and getting people into treatment and longer-term recovery. We are making progress on that, as indicated, on opioids, but having this interdiction is important too because the cost of this drug on the streets will be higher. Some of it will be stopped, and because of supply and demand, some of it will be higher. That is one of our issues right now is it is not only so powerful, it is so inexpensive relative to what it has been in the past.

So we thank you for what you are doing every day. You are saving lives by doing that.

Finally, let me just say what you are doing on trafficking is absolutely critical too. My sense is—and, Mr. Tubbs, you see this, I know, coming across Laredo. More and more of these traffickers are trafficking people in addition to drugs, and it is a very lucrative business, just as you talked about earlier about how lucrative the drug business is. So keeping a focus on that is also much appreciated by those of us here on this committee.

Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Portman, thank you for all the work you have done on the STOP Act.

I think we received good news that it sounds like an agreement that President Trump and President Xi had made is going to be implemented in terms of China cracking down on fentanyl.

My question for both Mr. Cherundolo and Mr. Tubbs is, how soon are we going to be able to evaluate the effectiveness of that, whether they are actually going to follow through on that, and are we going to be able to notice it?

Mr. CHERUNDOLO. So, Senator, my understanding is that May 1 is when the class-wide scheduling goes into effect, and we will monitor the different analogs, the fentanyl analogs. Certainly the groups, the trafficking groups that profit from this are going to continue to produce it, but it has in the instances so far, when they have scheduled analogs, has been a positive thing for us, where we have seen less of those analogs.

In your home State of Wisconsin, where they have class-wide schedule fentanyl, we are very positive about that. Again, because of the number of people dying from fentanyl, we felt it was important for us to emergency schedule it.

I think, again, only time will tell once we get past May 1 on the reduction in that, but certainly, there is still going to be a black market for organizations, transnational criminal organizations, both Chinese and Mexican, to traffic in fentanyl, but I think anything we can do, any tool that we can be given to strengthen similar to the Stopping Overdoses of Fentanyl Analogues (SOFA) Act that was introduced last year by you would be a helpful tool for law enforcement in prosecuting those because it is not a technicality that the analog gets switched by a slight chemical makeup and it makes it a legal substance rather than a controlled substance.

Chairman JOHNSON. Unfortunately, we were not able to get the SOFA Act across the finish line, even though every Attorney General—I think it is the first time in history—wrote a letter asking us to do that.

So your recommendation, please pursue that, and let us get the SOFA Act passed.

Mr. CHERUNDOLO. We will be glad to provide as much technical assistance as necessary for that.

Chairman JOHNSON. OK. Appreciate it.

Mr. Tubbs, what is your sense of Chinese law enforcement in terms of their effectiveness of cracking down in fentanyl. Are we going to see a dent in that?

Mr. TUBBS. I think we should be able to measure that in two ways. One is the number of intercepts that we have at our parcel transport hubs, and if we start seeing fentanyl being produced in Mexico, I think that will be a sure sign for us, for both of those.

Chairman JOHNSON. With my remaining time here, what I would like to do is just kind of close out the hearing, trying to lay out the current reality, because, again, it is a growing crisis.

Former Secretary of Homeland Security Jeh Johnson was on Microsoft National Broadcasting Company (MSNBC) two Fridays ago and talks about how when he would come into the office, if apprehensions—and this is a paraphrase—were less than 1,000, they

could deal with that. Over 1,000, it would be a really bad day. And yet we have seen apprehensions over 4,000 in recent weeks.

So, Mr. Karisch, I just really want to talk about what is happening now. I issued a press release saying that through no fault of CBPs, the law enforcement at the border has been reduced to nothing more than a mere speed bump for unaccompanied children and people coming in family units on their path to long-term residency. I think that is a pretty accurate assessment.

But just talk about functionally. We have heard reports that HHS is full. The house is full. So HHS cannot accept the flow, and so CBP now, even though they are not set up to do this, CBP is set up to turn, for example, unaccompanied children over to HHS, others to ICE. You are being forced to release people in the general population, correct? Can you just describe what is happening here?

Mr. KARISCH. Yes. Of course, our facilities were not built for this. We do not have the resources. I mean, we are law enforcement officers who are dealing with a significant challenge with the family units, something we do not want to do. In one week in RGV, we had 7,000 apprehensions in a week.

Normally, our in-custody number for short-term housing there is 3,300 in our short-term facilities that we have.

Chairman JOHNSON. Which is still massive.

Mr. KARISCH. Yes. But I had days actually where I was exceeding over 6,300 people in custody. We cannot keep people. We could not keep people in those conditions. We were not built to hold the families in the—

Chairman JOHNSON. So what is happening right now? What are you doing?

Mr. KARISCH. So what we had to do is issue a notice to appear, order of recognizance, which basically they were released with a promise to appear at a court date in the future. So, once again, we are simply feeding a cycle that more than likely people will not show up for a hearing. This is not the way of doing business.

If you look at the Southwest Border, over 364,000 apprehensions as of April 1, over 100 percent increase, we are all seeing this.

Chairman JOHNSON. Yes. I want to get in the details. So, first of all, the notice to appear, back after Deferred Action for Childhood Arrivals (DACA), those memoranda were issued, that notice to appear was called by the coyotes, the “permiso.”

Mr. KARISCH. Yes.

Chairman JOHNSON. Again, mis-marketing. DACA applies to none of the—that is about 800,000—850,000 people passed the DACA line there. It did not apply to them, but it was used. So that notice to appear was called a “permiso.” Is not that correct?

Mr. KARISCH. To them, yes, sir.

Chairman JOHNSON. So now CBP issues the notice to appear, and then what happens? What do you do with these individuals? You give them a notice to appear, which the coyotes call them the “permiso,” which by and large is their permission to enter the country and stay long term. But what specifically do you do?

Mr. KARISCH. We right now have worked with the NGO’s. We are getting a lot of respite centers in our areas to actually help.

Chairman JOHNSON. NGO’s like Catholic Charities.

Mr. KARISCH. Yes.

Chairman JOHNSON. OK. Then what do you do?

Mr. KARISCH. Catholic Charities. It is to help them out. Some of them are actually taken right to bus stations, already have relatives or sponsors in this country. We have to rely on the fact is that they are providing us with a genuine address, but we found in certain circumstances that after the fact, we realized that we actually had criminals in our custody that we did not know about at the time. When we tried to look for the, many times those were fictitious addresses. So some of them will be released in our communities, and we will never see them again.

Chairman JOHNSON. Within how many days are—let us say you got an adult male with a child, and you finally got the adult to admit that that was not his 1-year-old child. But how many days are they in your custody before you, CBP—you are not set up to do this, but are releasing these individuals to—it was described last week to the Greyhound bus station. You notified Catholic Charities. Catholic Charities comes over and picks up this group of people, and there are hundreds in a day. Then they have to deal with it, get people on the phone, and then give them a bus ticket—this is Catholic Charities providing that bus ticket—to all points in America. I mean, that is what is happening, right?

Mr. KARISCH. Yes, sir.

Chairman JOHNSON. So how many days do you have somebody in custody before you deliver them to that Greyhound bus station?

Mr. KARISCH. Right now because of the overwhelming number of people that we have in custody, as soon as we can get them processed, we are releasing.

Chairman JOHNSON. Which is how many hours or days?

Mr. KARISCH. It could be a matter of hours.

Chairman JOHNSON. So you really do not have the capacity—and this is kind of getting to what Senator Lankford was talking about—to determine is that the father or is that a sex trafficker. Is that his daughter, or is that his sexual traffic victim?

Mr. KARISCH. That is correct.

Chairman JOHNSON. That is a pretty accurate assessment?

Mr. KARISCH. Yes.

Chairman JOHNSON. Commander White, this is not the way the system is supposed to work, correct?

Mr. WHITE. I think it is safe to say that right now, all of the lead Federal agencies in this process—CBP, ICE, and HHS, ORR—are at or close to their operational capacity. I can say that—

Chairman JOHNSON. I mean, would not you say it is beyond their operation?

Mr. WHITE. We are at 97 percent, but the system—

Chairman JOHNSON. Is it not true—is it not true that—

Mr. WHITE. The system is over capacity.

Chairman JOHNSON [continuing]. HHS is not accepting all the individuals that CBP would like to send your way?

Mr. WHITE. That is actually not true, but let me clarify that. We are 97 percent occupancy, and over the last 7 days, we received an average of 279 children a day, and we discharged 267. So over the last 7 days, referrals in have exceeded discharges out, and we are at 97 percent.

Chairman JOHNSON. Again, you would only be getting unaccompanied children, though, at this point in time.

Mr. WHITE. We only receive unaccompanied.

Chairman JOHNSON. So the problem is with family units, and is it true, then, that ICE is beyond its capability of accepting the number of people in family units, pretty well forcing CBP into doing the releasing? Mr. Howe.

Mr. HOWE. We are not releasing from the port of entry. So we will be waiting until ERO has that capacity to take, and oftentimes Border Patrol will assist us. Some of our ports like Hidalgo have the capacity for 30 people, and once we get to that number—and if we get overrun where aliens are crossing the boundary line, then the number could go up to 95 or 100. So then Border Patrol assists us and takes them into custody, and if they meet the criteria, to have them released.

Chairman JOHNSON. A couple of years ago, the stats I had—and everything is changing, so nothing is static. But, approximately, 20 percent of family units presenting themselves or coming in this country or legally apprehended were headed by a male.

The last stats I had—and they are old—about 40 percent. I thought in testimony, you were saying about 50 percent now are headed by a male?

Mr. KARISCH. Fifty percent in the RGV sector, sir.

Chairman JOHNSON. OK. So, again, what you are seeing is—and by the way, the kind of average number of people in the family unit is basically two, correct?

Mr. KARISCH. On average. I mean, we tend to see different groups come in to our custody, but it could be one or two. Yes, sir.

Chairman JOHNSON. To me, that just indicates this is a shifting problem. Gone are the days where you are primarily dealing with a Mexican economic migrant. That was back in 2000 and prior to that. Now you are really dealing with unaccompanied children and people coming in, family units, and they are not trying to avoid apprehension, correct? They are turning themselves in.

Mr. KARISCH. Yes, sir.

Chairman JOHNSON. When I was down touring with the Border Patrol in the Rio Grande Valley, I remember one story of a large group of families coming in and starting a campfire and then complaining to the CBP officers that it took them an hour to get to their location. Is that an unusual story?

Mr. KARISCH. No. Because, first of all, anytime you have a large group—we do not have buses staged at every location, so it takes time. But I think our agents actually call it them apprehending us.

Chairman JOHNSON. So, Commander White, real quick, just to confirm also some other stats I have, unaccompanied children, historically about 70 percent have been male. Is that basically true?

Mr. WHITE. Prior to 2014, they were about two-thirds male. The proportion that are girls has grown.

Chairman JOHNSON. So what would you estimate now?

Mr. WHITE. I could look up the exact number, but over recent years, girls have at times grown to be as much as a third, and among separated children, a larger proportion.

Chairman JOHNSON. OK. A third is still leaving two-thirds, 67 percent, so my stats said about 70 percent, real close, are male, and about 70 percent are 15 or older, correct, 15, 16, and 17?

Mr. WHITE. I am sorry. I have the numbers with me. I just have to look them up.

The great majority historically have been over 12. Over time, it is trending younger, and those trends come and go.

Chairman JOHNSON. OK. I will give all the witnesses an opportunity. If there is something that you have not been able to make, a point you have not been able to make in response to questions, I will let you do it right now. We will start with Mr. Cherundolo.

Mr. CHERUNDOLO. Chairman, the only thing I would point out, circling back around to your question about China, hopefully by June of this year, our law enforcement to law enforcement relationships, we continue to develop those. In June of this year, we are hopeful to open another office in the Guangzhou Province in China. So that relationship and building upon the class scheduling and hopefully being able to provide technical support for our class scheduling is something we continue to work forward on and with our counterparts throughout the world, not just in China.

Chairman JOHNSON. You have seen a great deal of interest on this committee. So we are going to want to be updated on, hopefully, progress. Again, I view this as a really good sign. This is exactly what China needs to do, and I am glad they are. We just have to monitor and verify this is going to be happening. Commander White.

Mr. WHITE. Thank you, Senator.

So, Senator Johnson, as you have noted, the current levels of migration of migration, including for UACs, are much higher than historical norms. We just completed the biggest march in the history of the program in terms of number of children coming in. This not only speaks to our continuing requirement to expand temporary and permanent capacity so that we have a bed for every child. It also speaks to the imperative of Congress and the Administration working together to prevent future separations of children from family units. The program cannot support that.

Chairman JOHNSON. Again, I stated my thoughts on that for the record.

I think if you do take a look at that chart, you can see that the biggest problem right now, the growing problem is people coming as family units. Mr. Tubbs.

Mr. TUBBS. Yes, sir. Again, I appreciate you having me here today.

For myself as an HSI Special Agent and specifically being one assigned to the border, I can attest to myself and OFO and Border Patrol, our agents work 24/7. I mean, they are at a tax point that we are on the border. They are very passionate about what they do. They are very professional about what they do, and we look forward to continuing support from our legislators and our appropriators, so thank you.

Chairman JOHNSON. Mr. Howe.

Mr. HOWE. Thank you for the opportunity to be here, and thank you for all of the funding that you have provided us to improve our NII capability. I think it is going to really prove to be very worth-

while, and I thank you for your leadership and taking on the necessary legislation changes that we talked about today to fix the crisis.

Chairman JOHNSON. Mr. Karisch.

Mr. KARISCH. Senator Johnson, thank you for raising awareness in a very important issue to this country. This is not a manufactured crisis. We are living it every day.

My men and women are exhausted. They are frustrated, and the fact is they are having to release people, but they also understand that this is a reality of what we are facing today. And this is only a portion.

I worry about places like Venezuela in what we might see from immigration from those countries. So it is a very real issue that we are facing, and I appreciate the opportunity today.

Chairman JOHNSON. OK. Again, I want to thank all five of you for your service to this Nation.

You should not have to be dealing with this. The ball is squarely in Congress' court. We have to recognize this problem. The first step in solving a problem is admit you have one, and we have a problem in the here and now that requires legislative action.

So I want to work with each and every one of you. I want to work with the Administration. I want to work across the aisle. This should be a nonpartisan issue, and we ought to be doing the root-cause analysis. That is exactly what we are trying to do here is lay out the reality, going through the problem-solving process, gathering that information, defining the problem properly, the problem we are trying to solve, defining what is a solvable problem. What is an achievable goal? From my standpoint, that achievable goal is reducing that flow by having a consequence.

We have seen time and time again where there is a consequence to illegal activity, it gets reduced, and until we enact that consequence in absolutely humane fashion, this is going to continue to explode.

So, again, the ball is in our court. I thank you all for your service, for your testimony. Again, I hope all the Committee members carefully read it, and I am looking forward to working with them.

The hearing record will remain open for 15 days until April 24 at 5 p.m. for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 12:38 p.m., the Committee was adjourned.]

A P P E N D I X

Unprecedented Migration at the U.S. Southern Border: Perspectives From the Frontlines”
Opening Statement of Chairman Ron Johnson
April 9, 2019

As prepared for delivery.

There is a humanitarian and national security crisis at our southern border. The dedicated men and women of the Border Patrol, Customs and Border Protection, Immigration and Customs Enforcement, the Drug Enforcement Agency, and Health and Human Services work tirelessly on the frontlines to combat this crisis, but they are overwhelmed. The blame for this rests with Congress, which sits idly by while the crisis grows.

This crisis is unlike anything we have seen before. In the first six months of this fiscal year, Border Patrol apprehended approximately 192,000 family unit aliens and approximately 32,000 unaccompanied children. According to the Department of Homeland Security, we are on track to reach one million apprehensions by the end of the year, the first time in over a decade.

Comparing migration numbers from the last decade to today’s crisis is like comparing apples to oranges. In the past, the vast majority of migrants were single adult males from Mexico, whom the U.S. could remove within hours or days. The migrants crossing today are mostly families and unaccompanied children, and they are likely to remain in the United States for years, or even permanently. Our laws and legal precedents make it extremely difficult to detain and remove children and families who claim asylum, regardless of whether those claims are valid or not. As we heard from witnesses during our hearing last week, we have a virtual open border for families and children, and all of Central America knows it. Border security enforcement has been reduced to a mere speed bump for migrants on their path to long-term occupancy in the United States.

But the consequences of this crisis are not limited to immigration enforcement. Last week, because of the substantial number of families and children streaming into our country, DHS began moving 750 officers off our ports of entry and to the border to help care for and process families. According to Border Patrol Chief Carla Provost, “approximately 40% of manpower [is] dedicated to addressing the humanitarian crisis at the southwest border.” In other words, the agencies charged with securing our borders have been transformed into a humanitarian relief mission. They are doing an admirable job under stressful conditions, but Congress did not establish CBP and Border Patrol to care for children. This reallocation of resources makes our borders and our nation less secure. It slows trade and travel; enriches cartels and human smuggling networks; makes drug smuggling even easier and more lucrative; and encourages others to embark on a dangerous journey to the U.S.

Our compassionate asylum system is being exploited—by economic migrants, drug cartels, human smugglers, and other bad actors—because we do not have the will and skill to fix it. Which means things are likely to get worse. Only Congress can fix this emergency. I reiterate my challenge to my colleagues: If you do not support this new reality of open borders, work with me to fix our flawed immigration system.

This is the second in a series of hearings about the unprecedented crisis at the southern border. Today, we hear perspectives from the frontline efforts to confront this crisis. We would like to welcome our witnesses:

- Rodolfo Karisch, Border Patrol, Chief Patrol Agent for the Rio Grande Valley Sector,
- Randy Howe, Customs and Border Protection, Executive Director for Operations at the Office of Field Operations,
- Timothy Tubbs, Homeland Security Investigations, Deputy Special Agent in Charge – Laredo, TX,
- Greg Cherundolo, Drug Enforcement Agency, Chief of Operations, and
- Commander Jonathan White, Department of Health and Human Services Office of Emergency Management and Medical Operations.

I am grateful to the witnesses for being here.

**"UNPRECEDENTED MIGRATION AT THE SOUTHERN BORDER: PERSPECTIVES FROM THE
FRONTLINE"**

Opening Statement of Ranking Member Gary C. Peters

April 9, 2019

AS PREPARED FOR DELIVERY

Mr. Chairman,

Thank you for holding this hearing today. Last Thursday's hearing provided information about the scope and scale of the challenges we face on our southern border – important historical context – and a chance to examine how we can better work with the governments of Mexico, Guatemala, Honduras, and El Salvador.

During my opening statement, just five days ago, I said that securing our borders will take cooperation and credibility from this Administration – not chaos and confusion.

Unfortunately, in the days since, we have seen nothing but more chaos.

Since this first southern border hearing concluded, just five days ago, we have seen the Administration withdraw their nominee to be Director of U.S. Immigration and Customs Enforcement – a nominee who had a hearing before this committee last year and was approved during a committee meeting last month.

We have seen the announcement of Homeland Security Secretary Nielsen's resignation. We have seen the President fire Secret Service Director Randolph Alles for unknown reasons, creating another senior vacancy at the Department of Homeland Security, and we have seen reports that the White House is potentially preparing to fire the director of U.S. Citizenship and Immigration Services.

It is, in a word, chaos.

The problems we face at our southern border will not be fixed with high-profile firings, tweets, or press conferences. It will take leadership and, as I said last week, it will take cooperation and credibility.

By the end of the week, the Department of Homeland Security will have no secretary, no deputy secretary, no chief financial officer; nobody leading multiple major bureaus and therefore virtually no accountability to the American people.

We are looking at an absence of leadership at the top of the third-largest department in our federal government, a department charged with preventing terrorism, securing our borders, enforcing our immigration laws, safeguarding cyberspace, and ensuring resilience to disasters.

Fortunately, the men and women of DHS and its component agencies, career public servants, continue to show up to work and do their best across the country and in the midst of a very difficult situation on our southern border.

Last week we heard that it is not just the number, but the composition of the migrant groups is straining our infrastructure. Specifically, the influx of families and children seeking asylum from dangerous conditions in Northern Triangle countries has created unprecedented challenges for our frontline personnel.

There are no easy answers or quick fixes here. But we know that the trauma of detaining young children and separating them from their parents puts these children at risk of irreparable harm. I have asked multiple officials from this administration who have testified before this committee, “how long is too long to detain a child?” I have yet to receive a real answer.

We must do better.

We need to reduce the backlogs in processing asylum claims. Screening interviews are being delayed. The average wait to appear before an immigration court is now over two years and the backlog is quickly approaching one million cases. This is unacceptable.

We need to address root causes of mass migration, take on the violence and impunity that reigns across the Northern Triangle, and disrupt the transnational criminal organizations that cash in on drug trafficking and human smuggling.

This will take careful cooperation with regional governments, law enforcement, and civil society – not cutting off existing funding to non-profit organizations in the Northern Triangle.

We need Mexico to do more to address the flow of migrants across their southern border. But it will take sustained cooperation and American leadership, not baseless threats and disengagement.

Finally, we need to secure our southern border.

I look forward to hearing from our witnesses about what is working and what is not.

I look forward to hearing how we can replicate your successes and address your challenges, and I look forward to discussing how we can improve the data that Congress and federal agencies rely on to make decisions.

Thank you all for being here today.



TESTIMONY OF

Randy Howe
Executive Director for Operations
Office of Field Operations
U.S. Customs and Border Protection

and

Rodolfo Karisch
Chief Patrol Agent
Rio Grande Valley Sector
U.S. Border Patrol
U.S. Customs and Border Protection

BEFORE

U.S. Senate
Committee on Homeland Security and Governmental Affairs

ON

"Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline"

April 9, 2019
Washington, DC

Chairman Johnson, Ranking Member Peters, and Members of the Committee, thank you for the opportunity to appear before you today.

U.S. Customs and Border Protection (CBP) is currently experiencing an unprecedented and unsustainable situation at the southwest border. In fact, it is nothing short of a border security and humanitarian crisis.

Each day, we see the cascading effects of mass migration both at and between our ports of entry. The vast majority are Central American families and unaccompanied alien children (UAC). The increased shift to these more vulnerable populations, combined with overwhelming numbers, profoundly impacts our ability to patrol the border, diminishing our ability to deter deadly narcotics and dangerous people from entering our country. Inadequate detention capacity and overwhelmed U.S. Immigration and Customs Enforcement (ICE) resources greatly contributes to this crisis.

The current migration patterns have reaped huge profits for the transnational criminal organizations (TCOs) that use smuggling as a cash flow source. This has caused a significant human toll on some of the world's most vulnerable populations, further exacerbating the implications of already stretched resources.

Today's testimony is an account of what the men and women of CBP are seeing and experiencing on the frontlines of our nation every day. We appreciate the opportunity to share their perspective with you.

A Dangerous Journey

The journey from Central America through Mexico to the southern border of the United States is a dangerous one. From unscrupulous human smugglers and dangerous methods of travel to harsh environmental conditions, the perils that migrants face are very real.

Every year, Border Patrol agents save thousands of people who are overcome by the conditions on their journey, including those suffering from dehydration, heat stroke, starvation, or hypothermia. Our agents save people who are drowning in rivers, abandoned in deserts, or staged in inhumane stash houses. They also find those who have been sexually assaulted, and others who are left for dead by smugglers intent on the profit of delivering the larger group—at the cost of someone's life. In total, Border Patrol agents rescued more than 4,300 individuals in FY 2018, and rescued nearly 850 in just the first four months of FY 2019.

Desperate migrants often pay human smuggling groups thousands of dollars to aid them on their journey. Smugglers and traffickers profit from human misery by exploiting people who are seeking a better life. They deceive desperate people about our country's laws, while also abusing and exploiting them on their journey north. These smugglers, many with ties to TCOs, often deprive migrants of food and water, physically assault them, and place them in inhumane traveling conditions, such as locking them in tractor-trailers while outside temperatures can reach in excess of 115 degrees. Still other migrants are transitioned into trafficking or used as drug

mules. Human smugglers have no regard for the health and safety of the migrants on whom they prey, and who pay them. As a result, many who make the journey become sick, injured, or traumatized. Some even lose their lives.

Many migrants travel north from countries where poverty and disease are rampant, and their health can be aggravated by the physical toll of the journey. In many cases, they arrive at our southern border already exhibiting symptoms of a health issue. Those we encounter may have never seen a doctor, received immunizations, or lived in sanitary conditions. Close quarters on trains and buses that smugglers procure for moving them through Mexico can hasten the spread of communicable diseases. All of these factors leave migrants vulnerable to serious medical complications.

Situation at the Southwest Border

In the first five months of FY 2019—through the end of February—CBP encountered an average of more than 60,000 migrants per month crossing illegally and presenting at ports of entry without proper documents. In February alone, we encountered more than 76,000 migrants, 87 percent of whom were apprehended while illegally crossing the border.

Although not even half the fiscal year has passed, the U.S. Border Patrol has apprehended more people crossing illegally than in all of FY 2017. In March alone, the projected number of total apprehensions and inadmissible aliens will likely reach 100,000. By the end of March, the first six months of FY 2019 will exceed four of the last ten fiscal year totals.

One trend we are seeing is an increase in the number of family units arriving at our border. More than half of those crossing the U.S. southern border are members of family units. In fact, the Border Patrol has already apprehended more families illegally crossing in the first five months of FY 2019 than during all of FY 2018, eclipsing last year's record total by almost 30,000 with seven months still to go until the end of the year. In February, we apprehended over 36,000 individual family unit members, a 560 percent increase over the same month in FY 2018.

At the same time, apprehensions and encounters of UAC have increased 37 percent over this time last year, exceeding 7,000 in February. We are on pace for more than 27,000 children, both with parents and unaccompanied, to enter our immigration enforcement process in the month of April. Approximately one-fifth of them are under five years of age.

The second trend is that CBP apprehensions of Mexican migrants remain at historically low levels, while the majority of illegal migrants now originate from the three countries of Central America known as the Northern Triangle: Guatemala, Honduras, and El Salvador. The number of Northern Triangle migrants exceeded the number of Mexican migrants in four of the past five fiscal years and has reached a total of more than 64 percent of crossings thus far this fiscal year. Unlike single adult migrants from Mexico, UACs or families from Central America cannot be swiftly repatriated.

The third major trend is the dramatic increase in claims of a fear of return to a migrant's country of origin. Between 2000 and 2013, less than one percent of those apprehended or encountered at our border claimed a fear of return. In FY 2018, a record level of more than 38,000 people claimed a fear of return—a 120 percent increase over FY 2017. In FY 2019, we have almost reached that total in the first five months alone, with an almost 90 percent increase in fear of return over FY 2018. Central American families are coming to our border and claiming fear of return because they know that DHS must release them within 20 days under court order, and that they will be allowed to stay in the U.S. indefinitely while awaiting immigration court proceedings.

Exacerbating these challenges, the U.S. Border Patrol is now apprehending larger and larger groups between ports of entry; more than 90 groups of migrants each comprising over 100 members (primarily Guatemalan and Honduran families) have been apprehended in remote areas of the border so far this fiscal year. The largest of these groups included 334 migrants who arrived in the boot heel of New Mexico, 94 miles from the nearest Border Patrol Station. Human smugglers are now presenting diversified offerings to potential prospective migrants, including an "express" route of five- to seven-day days from western Guatemala to the U.S. border.

Human smugglers strategically choose the timing and location for these large group crossings in order to disrupt U.S. border security efforts, create a diversion for smuggling of narcotics, and allow single adults seeking to evade capture an opportunity to cross unnoticed. Even worse, these smugglers bring horrible violence, sexual assault, and extortion on some of the most vulnerable people in our hemisphere.

Since October 2018, CBP has seen an increase in migrants' use of caravans to make the journey north towards the United States. DHS defines a migrant caravan as "an autonomous group of 300 or more individuals organized in advance by non-state actors that travels in a coordinated manner, migrating from one country to another often times, though not exclusivity, in violation of a given country's national immigration laws and policies, with some members (or organizers) having the ancillary goals of advocating a political position and/or bringing media attention to social or political issues."

Traveling with a caravan is appealing to some migrants because they perceive it provides a safer journey and avoids the thousands of dollars in costs associated with traveling with a human smuggler. The phenomenon of large organized groups transiting Mexico has successfully accelerated migrants' timelines to reach the border by utilizing transportation services provided by state and local governments assisting in moving migrants throughout Mexico. Although caravans receive a lot of media attention, they represent only a tiny fraction of the overall illegal migration volume to the southwest border.

Given the modified routes and awareness of the likelihood of release into to the United States if migrants arrive as a family unit, we are seeing more families arriving with young children, and more cases of ill children arriving at the border. While the men and women of CBP pride themselves on providing appropriate care for those in its custody, the volume of family units, the unique care and custody requirements presented by these increasing numbers, the demographics

of those crossing, and the increase in medical issues, has caused CBP to consider the use and expansion of urgent and sustained interagency support to safely and appropriately process migrants. CBP continues to work with its interagency partners to identify options to meet the needs of the increasing numbers of migrants.

The border security and humanitarian crisis at the southwest border continues to present significant operational challenges to CBP, and current trends indicate that it will worsen as we enter the warmer spring months.

The Border Patrol has reallocated agents and other logistical resources to fulfill processing, detention, and humanitarian needs as agents confront the continuous flow of families and unaccompanied children into the United States. We are committed to effectively using our resources to support border security operations and the ongoing humanitarian efforts. CBP generally holds populations such as families and UAC apart from single adults for their safety and wellbeing. However, the influx of family units has led to CBP facilities operating at capacities they were not designed for.

Centralized Processing Center

In the El Paso Sector alone, we have seen a 434 percent increase in apprehensions this fiscal year, exacerbating capacity constraints in our facilities.

To address this influx, CBP is currently taking steps to establish a Centralized Processing Center (CPC) in the El Paso Sector. This will help us protect the health and safety of those in custody while streamlining operations and reducing time in custody. The El Paso CPC, modeled in part on the CPC established in 2014 in the Rio Grande Valley Sector, will provide a centralized location for the processing of migrants, and will facilitate consistent medical assessments in a centralized location before DHS transfers UACs to shelters funded by U.S. Department of Health and Human Services/Office of Refugee Resettlement, and single adults and family units to ICE Enforcement and Removal Operations (ERO).

CBP's Response to the Crisis

CBP is addressing this border security and humanitarian crisis with all available resources. A key component of our strategy is deterring illegal entry, and we are putting the initial investments in the border wall system to good use. Ninety-three percent of FY 2017-funded border wall replacement projects—approximately 37 miles—were completed by February 15, 2019. An additional \$1 billion in FY 2018-funded construction contracts were awarded in February 2019.

The installation of a modern barrier in key border areas has made an immediate impact. A two-mile stretch of border immediately west of the Calexico West Port of Entry in Border Patrol's El Centro Sector in California, has been a consistent hot spot for illegal activity. The presence of local pedestrian and vehicle traffic from a shopping center just steps away from the border allowed illegal border crossers to quickly vanish into the United States. Since construction of

approximately two miles of new steel bollard border wall and the installation of cameras and sensors, agents have been better able to deter individuals from crossing illegally into the U.S. in this location. Additionally, the steel bollard design has increased agents' safety by allowing them to maintain a full line of sight through the barrier.

In El Paso, Texas, CBP replaced 20 miles of vehicle barrier with pedestrian barrier, giving Border Patrol agents new capabilities to deter illegal border crossers. Government construction projects usually take two years or more to begin. In contrast, construction on border fencing projects began within months, in response to the urgent operational need. These projects are nearly complete and are expected to be delivered on time and within budget.

In FY 2019, we received funding for additional primary pedestrian fencing in the Rio Grande Valley Sector. We also received \$100 million for border surveillance technology, including fixed towers, remote video surveillance systems, mobile surveillance capability systems, and innovative towers. These investments assist Border Patrol agents in the field, as they increase CBP's ability to detect illegal activity along the border, increase our operational capabilities, and improve the safety of frontline law enforcement personnel. We will aggressively implement the security enhancements supported by these investments, and deploy capabilities consistent with the requirements of our agents on the ground.

We have also taken measures to expand our capacity to care for the historic influx of migrants. On December 25, 2018, Commissioner McAleenan directed CBP to oversee same-day secondary medical reviews of all children who were in Border Patrol custody by contract medical professionals or Border Patrol agents and CBP officers trained as EMTs or paramedics.

On January 28, 2019, the Commissioner issued an additional directive to guide CBP's deployment of enhanced medical evaluations for individuals in CBP custody along the southwest border.

CBP requested and received medical field support from the U.S. Coast Guard and the U.S. Public Health Service Commissioned Corps. Those teams deployed to the Yuma, Tucson, and El Paso Sectors and have increased capacity to perform pediatric medical checks. We are also expanding the use of contracted medical personnel to perform medical screening and triage in areas of the southwest border where we are experiencing the highest volume of UAC and family unit apprehensions.

We have worked with ICE regarding any available surge options for transportation to Family Residential Centers and/or supervised release. We are also reviewing all appropriate options to relieve recent crowding in Border Patrol stations and checkpoints, including engaging with non-governmental organizations and local partners.

We are also coordinating with the Centers for Disease Control and Prevention to gather data on infectious diseases among migrants in custody, and develop recommendations for further CBP action. We are seeking advice from external medical experts, including the American Pediatric Association and others.

Conditions at the Ports of Entry

CBP officers at our nation's POEs focus on four priority missions: national security; counter-narcotics, economic security, and the facilitation of legitimate trade and travel.

The operational capacity at a POE varies depending on overall port volume, facility capacity, resource constraints, and daily tactical and enforcement activities. Operational impact at POEs cannot always be planned; for example, we do not know in advance when we will discover human, narcotics, or weapons smuggling attempts, or which individuals may present a threat to our officers. It takes significant resources to manage this highly variable environment.

Similar to what we see between POEs, we are seeing increased numbers of migrants, including family units and other aliens who arrive without proper documents, many of whom claim a fear of return. Large groups of inadmissible aliens, sometimes in the hundreds, arriving at POEs strain our processes and divert our officers from their priority missions, as those migrants need to be processed in a humane and efficient manner.

Our short-term holding facilities at POEs were neither designed for the large volume of inadmissible persons nor the long-term custody of individuals awaiting transfer to ICE/ERO detention facilities. We consider 4,000 detainees to be a high number of migrants in custody, and consider 6,000 detainees to be at a crisis level. On March 27, 2019, CBP had more than an unprecedented 13,000 detainees in custody.

CBP officers are committed to our multifaceted national security and legitimate trade and travel mission sets. The processing of inadmissible aliens is only one aspect of our many missions. CBP's Office of Field Operations (OFO) processes all persons who apply for admission at POEs and does not turn away anyone who is seeking asylum. At times, due to operational capacity or as necessary to facilitate orderly processing and maintain the security and safety of the traveling public, individuals may need to wait in Mexico before being permitted to enter the POE.

To confront the unprecedented humanitarian and border security crisis on the southwest border, CBP is temporarily re-assigning CBP officers from several POEs to Border Patrol Sectors. These officers will be deployed from the San Diego, Tucson, El Paso, and Laredo Field Offices' areas of responsibility, which will impact CBP's ability to process trade and travel at those locations. CBP officers will support Border Patrol Sectors with care and custody responsibilities, including hospital watch and transportation. We are working closely with the trade community, local authorities, and other partners to mitigate the impact of reduced staffing at the southwest border ports.

Narcotics

Illegal drugs continue to flow into the United States at POEs in the air, land, and sea environments. CBP has a unique responsibility and a critical role in preventing illicit narcotics, including opioids, from entering our country. CBP, with the support of Congress, has made significant investments in, and improvements to, drug detection and interdiction technology and

targeting capabilities at and in between our POEs. For example, CBP was the first agency in the nation to successfully train and utilize canines in the detection of fentanyl, and is a trendsetter in the use and development of non-intrusive inspection (NII) capabilities.

Marijuana continues to account for the bulk of contraband drugs CBP seized by weight. However, that amount has been on a downward trajectory in the past few years. As we have observed a decline in the amounts of marijuana seized at POEs, interdictions of harder, more profitable, and more dangerous drugs are holding steady or increasing. At the end of FY 2018, we saw increases in the amounts of methamphetamine and heroin; cocaine is currently trending upwards in FY 2019.

To counter this, CBP has deployed additional chemical field screening equipment with the ability to presumptively identify more than 14,000 substances, and all OFO concealed human and narcotic detection canine teams across the operational environment have completed training to detect fentanyl and fentanyl analogues.

We use advanced detection equipment and technology, including NII equipment and radiation detection technologies, to maintain robust cargo, commercial conveyance, and vehicle inspection regimes at our POEs. NII technologies deployed to our land, sea, and air POEs include large-scale X-ray and gamma-ray imaging systems, as well as a variety of portable and handheld technologies. NII systems enable CBP officers to examine cargo conveyances such as shipping containers, commercial trucks, and rail cars, as well as privately owned vehicles, for the presence of contraband without physically opening or unloading them.

For FY 2019, CBP has received \$564 million for NII at land POEs. This is a historic investment that will allow CBP to transform its efforts to stop illicit drugs from entering the country through legal crossing points. Combined with \$76.9 million for personnel, lab equipment, canine units, and POE technologies to support countermeasures against opioid trafficking, CBP will be able to increase the number of vehicles crossing our borders that are scanned with cutting edge technology, and develop the forensic capabilities necessary to ensure prosecution and criminal sanctions. CBP appreciates the support of Congress for these critically-needed capabilities.

While most of the focus of this testimony has been our in-bound mission, our outbound mission to stem the outbound flow of firearms, currency, stolen vehicles, and fugitives departing the country is equally critical. In many cases, our efforts prevent cartels south of our border from receiving funds, weapons and support. In cargo, our outbound role includes preventing terrorist groups, rogue nations, and other criminal organizations from obtaining U.S. Munitions List (USML) and Commerce Control List (CCL) commodities; and enforcing sanctions and trade embargoes while increasing export compliance.

Conclusion

CBP has four priority missions: national security; counter-narcotics, economic security, and the facilitation of legitimate trade and travel. While we are the largest agency in the immigration

process, we are only the first step—and processing migrants is only a fraction of the CBP mission, albeit one we take extremely seriously.

We have dedicated every available resource to stop the flow of illegal migrants and dangerous drugs into the United States, including personnel, technology, and innovating outreach and engagement with international and non-governmental industry partners. However, despite our efforts, the system is overwhelmed. The nation is facing a full-blown security and humanitarian crisis along our southwest border. We need Congress to acknowledge the crisis and help us by taking legislative action in support of CBP and our partners.

Thank you for the opportunity to testify. We look forward to your questions.



U.S. Immigration and Customs Enforcement

STATEMENT

OF

TIMOTHY J. TUBBS

DEPUTY SPECIAL AGENT IN CHARGE
HOMELAND SECURITY INVESTIGATIONS - LAREDO

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

*"UNPRECEDENTED MIGRATION AT THE U.S. SOUTHERN BORDER: FRONTLINE
PERSPECTIVE"*

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

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342 Dirksen Senate Office Building

Chairman Johnson, Ranking Member Peters, and distinguished members of the committee, Committee thank you for the opportunity to appear before you today to discuss threats posed by Transnational Criminal Organizations (TCOs) and the efforts of U.S. Immigration and Customs Enforcement (ICE) to identify, target, investigate, disrupt, dismantle and bring to justice these criminal elements.

ICE Homeland Security Investigations (HSI) leverages its broad authority, unique investigative tools, and global footprint to secure our borders. We work in close coordination with U.S. Customs and Border Protection (CBP), the Drug Enforcement Administration (DEA), and many other domestic and international law enforcement and immigration and customs partners to target TCOs. Today, I will provide ICE's perspective on the sophisticated smuggling threats that we face on our Southwest Border, the approaches that lead up to our border, and some of what we do to address TCOs and their smuggling activities before contraband arrives at our borders and into the interior of the United States.

The Cartels along the Southwest Border

The primary TCOs that threaten the Southwest Border of the United States are Mexican Drug Cartels (the Cartels). Over the last decade the United States, working with our Mexican law enforcement and military counterparts, has had sustained success in disrupting Cartel leaders and prosecuting them in the United States, as evidenced by the recent conviction of Joaquin Guzman Loera, aka "El Chapo." However, every law enforcement success against the Cartels is challenged by the fact that the Cartels are highly networked organizations with built-in redundancies that regularly adapt based on their highly-sophisticated intelligence capability about U.S. border security and recent law enforcement arrests and seizures.

Mexican Cartels, notably Sinaloa, Jalisco New Generation, Los Zetas, and the Gulf Cartel, stretch across and beyond the Southwest Border, operating through networks and loose affiliations with smaller organizations in cities across the United States. The areas controlled by each Cartel have evolved over time, often as a result of U.S. or Mexican law enforcement successes that have impacted Cartel influence in certain areas, and as alliances between Cartel leadership shifts over time.

In addition to drug smuggling, other criminal threats that we face along our Southwest Border are human smuggling and human trafficking. Human smuggling and trafficking are two distinctly different crimes. Human trafficking is exploitation-based, with or without a border crossing, and requires force, fraud, or coercion compelling someone into labor or commercial sex, or causing a minor to engage in commercial sex. Conversely, human smuggling is transportation-based, requires the crossing of a border, and involves individuals who seek help in gaining illegal entry into the U.S. Human smuggling can transition and develop into trafficking once force, fraud, or coercion are introduced into the scheme to induce participation in forced labor or commercial sex.

One of the questions we are often asked is whether human smuggling organizations are part of the Cartels or operate as distinct criminal enterprises. Based on HSI investigations and intelligence, it is our opinion that, although alien smuggling organizations pay taxes and fees to the Cartels to smuggle in a specific geographic area, they are generally run as distinct criminal enterprises worldwide and in both Mexico and the United States. Certain associates of drug cartels control the major drug markets and others control a portion of the border on behalf of their cartel. We believe that these drug cartel leaders and associates play a coordinating role in the immediate border areas, dictating when and where human smugglers will be allowed to cross

the border. This coordination ensures human smugglers and their human cargo do not bring unwanted law enforcement attention, particularly in the United States, to smuggling efforts. Our investigations have shown that when human smugglers do not heed warnings from drug smuggling organizations about where and when they smuggle, Cartel members can target them for physical violence, including murder.

Another crime that stems from the border is human trafficking. During our investigations, we have not identified traffickers coming across the Southwest Border with victims, but we know that some individuals that are smuggled across the Southwest Border are transitioned into human trafficking victims. These crimes are detrimental to the national security and safety of the United States.

Smuggling Trends along the Southwest Border

As many of the members of this Committee know firsthand, the Southwest Border is a very diverse environment, starting with a maritime border in the Gulf of Mexico and on the Pacific Ocean that transitions to vast land border areas that include rivers, rural agricultural lands, and densely populated urban areas along the nearly 2,000 miles of our border. In response to these vastly different areas, the Cartels adapt their methods and cargo to the smuggling environment. From an operational point of view, there is no single strategy, tactic or technology that will succeed in eliminating the smuggling threat on every part of the Southwest Border.

Mexico is a major source and transit country for illicit drugs destined for the United States, including marijuana, cocaine, methamphetamine, heroin, and, more recently, fentanyl. Intelligence reports indicate that Mexico is not only a source country for the production of fentanyl, it is also a transit country for fentanyl originating from Asia. Finally, in the last two

decades, Mexico has also become the largest transit country for South American sourced cocaine destined for the United States.

As a result of Mexico's dominant role as either a source or transit point for illicit drugs destined for the United States, it has also become a primary destination for the illicit proceeds that the Cartels earn from the distribution networks in the United States. Mexican cartels use a variety of techniques to repatriate illicit proceeds, from bulk cash smuggling to sophisticated trade-based money laundering schemes. Many of the more complex techniques rely on third party money launderers and corrupt financial institutions.

To give you a sense of the variety of smuggling challenges that we collectively face, it is important to start by talking about the specific drug threats, smuggling methods, and modes used across the spectrum of the Southwest Border.

Heroin

Mexico has become the most significant source of heroin consumed in the United States, and according to the 2016 National Drug Threat Assessment Summary, the U.S. Government estimated that Mexican Cartels' potential production of heroin was 70 metric tons in 2015, a 66 percent increase from 2014. The purity of Mexican-produced heroin has also increased over time, making it more marketable because it can be smoked or snorted as well as injected intravenously.

Fentanyl

The Mexican Cartels have quickly added fentanyl to their smuggled drugs in response to the explosion of opiate abuse in the United States. We have learned from seizures that smugglers are comingling fentanyl in contraband loads also containing heroin and/or methamphetamine, reinforcing the poly-drug nature of the Cartels. While U.S. law enforcement

continues to assess how much of the fentanyl market in the U.S. is supported by Mexican-sourced fentanyl, the size of individual seizures and the proximity of Mexico to the U.S. drug market is a troubling sign.

Cocaine

Mexico is a transit country for South American-sourced cocaine. Cocaine is regularly seized at Ports of Entry (POEs) in non-factory compartments of privately-owned vehicles (POVs). Alternatively, the cocaine may be deeply concealed within commercial conveyances and cargo shipments.

Methamphetamine

The majority of methamphetamine consumed in the U.S. is now produced in Mexico using precursor chemicals from Asia. Methamphetamine is almost exclusively seized in non-factory compartments of POV. The second most common method of smuggling methamphetamine is by pedestrians who secrete it on their bodies or within body cavities. Methamphetamine is seized in both crystalline and liquid forms.

Marijuana

As I mentioned earlier, the Mexican Cartels cultivate marijuana, with Mexico being the largest foreign supplier of marijuana to the U.S. drug market. The majority of the marijuana seized by DHS agencies is seized as it is being smuggled between the POEs. When marijuana is seized at U.S. POEs, it is most often found concealed among commercial cargo shipments.

Southwest Border Smuggling Methods and Related Challenges

Recognizing that the border in Southern California, Arizona, New Mexico, and Texas are vastly different, the Cartels adapt their smuggling methods to suit a specific area. The unifying goal of all smugglers is to try to blend into normal traffic in a given area in order to avoid law

enforcement attention. On a daily basis, the Cartels conduct surveillance of law enforcement operations along the border, principally focusing on CBP operations at and between the POEs. As the Department changes its tactics and techniques, or introduces new technology and infrastructure, the Cartels adapt their operations and probe our border security to determine the best way to accomplish their goals.

Land Ports of Entry

At POEs along the Southwest land border, smugglers use a wide variety of tactics and techniques for concealing drugs. Our special agents work every day with CBP officers from the Office of Field Operations to identify, seize, and investigate drug smuggling organizations that attempt to exploit POEs to introduce drugs into the United States. Within the POE environment, there are three distinct threat areas exploited by the Cartels: Pedestrians; POVs; and Commercial Cargo. Pedestrians are primarily used to smuggle cocaine, heroin and methamphetamine on or within their bodies. POVs are used to smuggle cocaine, heroin, fentanyl, methamphetamine, and marijuana, often using deep concealment methods like non-factory compartments, gas tanks and other voids. At Commercial POEs, the Cartels utilize commercial tractor trailers to commingle narcotics with legitimate commercial goods or to conceal the narcotics within the tractor trailers themselves.

The Cartels also use spotters/scouts and counter-surveillance techniques both at and between the POEs in order to increase their chances of success in smuggling ventures. Spotters/scouts watch and report on law enforcement activities at the border.

Between the Ports of Entry

The Cartels use the areas between the POEs primarily to smuggle marijuana in bulk. In these areas, the Cartels use a variety of techniques that are tailored to the terrain and other

environmental factors. In Texas, the Rio Grande River creates a natural barrier that poses unique challenges for both the Cartels and the U.S. Border Patrol.

Outside of urban areas along the land border, one tactic used by the Cartels is vehicle incursions, or “drive-throughs,” whereby smugglers breach the border by either going over or through border fences. Smugglers move vehicles over the fence using ramps or, on more rare occasions, lift vehicles over the fence using cranes. Going through the fence involves cutting fence panels and lifting them up or creating a gate in the fence allowing a vehicle to pass through. Vehicle incursions often rely on networks of scouts that are staged on the area’s highest points to warn them of U.S. Border Patrol or other law enforcement presence.

In areas where the Cartels cannot conduct vehicle incursions, they have experimented with ways to throw or launch marijuana bundles over the fence to co-conspirators waiting in the United States. Recently, we have seen Cartel attempts to use air or propane cannons to launch bundles of marijuana weighing more than a hundred pounds over the border fence.

Another tactic Cartels use in remote areas between the POEs is to have backpackers carry bundles of marijuana on their backs using improvised backpacks made of burlap or other materials. Backpackers often travel in groups and have been known to travel for days before getting to pre-designated locations where other members of the organization in the United States pick them up.

Smuggling by general aviation aircraft from Mexico has not been a significant threat since the late 1990s; however, in the last decade, we have seen the Cartels experiment with the use of ultralight aircraft to smuggle marijuana in Arizona and eastern California. More recently, we have also seen the Cartels experiment with the use of small recreational drones to smuggle very small quantities of drugs, often just a couple of pounds.

In 1990, the first cross-border tunnel was discovered in Douglas, Arizona. Since that time, 243 tunnels (both completed and in progress) have been located along the Southwest Border, primarily in Arizona and Southern California. The discovery of illicit subterranean tunnels is evidence that smugglers are moving away from traditional smuggling techniques due to enhanced law enforcement efforts. In recognition of the significant smuggling threat present in Arizona and San Diego, ICE leads two Tunnel Task Forces in San Diego and Nogales under the auspices of the Border Enforcement Security Task Force (BEST) Program, described in more detail below.

Maritime Smuggling

As infrastructure, technology, and staffing have been added to the border in the San Diego area, we have seen an increase in maritime smuggling of marijuana from Mexico to California coastal areas north of San Diego. The Cartels use pleasure boats or small commercial fishing vessels known as "Pangas" that are able to achieve relatively high speeds under the cover of darkness to attempt to evade detection by CBP and U.S. Coast Guard (USCG) surface patrol vessels and patrol aircraft.

Corruption

One of the major factors allowing the Cartels to sustain their existence and proliferate is public corruption in both Mexico and the United States. In Mexico, the Cartels rely on corrupt Mexican law enforcement and other public officials at every level of government to operate. U.S. law enforcement is not immune to corruption by the Cartels, who have used corrupt law enforcement officers from CBP, ICE, and other federal, state, and local law enforcement agencies to avoid seizures and arrests.

Attacking Transnational Criminal Organizations (TCOs)

In response to the smuggling threat along the Southwest Border, we have assigned more than 1,700 special agents and 180 intelligence research specialists to our Southwest Border offices.

In fiscal year (FY) 2018, HSI drug smuggling investigations conducted by the HSI Special Agents in Charge of five Southwest border offices resulted in 4,561 criminal arrests, 3,523 indictments, 3,173 convictions, and 153 administrative immigration arrests. We continue to collaborate with our partners in federal, tribal, international law enforcement, state, and local law enforcement agencies to identify, target, investigate, disrupt, and dismantle the Cartels. The following is a list of the various initiatives we use to combat TCOs:

DHS Joint Task Forces

In 2015, the Secretary of Homeland Security created three Joint Task Forces (JTFs) to address the smuggling threats identified in the Southern Border and Approaches Campaign Plan. Two of the JTFs, JTF East (JTF-E) and JTF West (JTF-W), are geographically focused task forces that concentrate on the southern land and maritime border of the United States and the approaches to our border all the way to Central and South America. HSI has provided Senior Executives to serve as the Deputy Directors of JTF-E and JTF-W, as well as staff-level support in the JTF-E and JTF-W Joint Staffs.

ICE has been designated as the executive agent for the third Joint Task Force, Joint Task Force Investigations (JTF-I), with other DHS Components supporting. JTF-I is a joint, integrated, “functional” task force that has the responsibility of targeting top-tier criminal investigations and supporting JTF-E and JTF-W. The success of JTF-I in these diverse environments depends upon a high level of cooperation among HSI and our federal, state, local,

and foreign partners in consolidating resources and leveraging unique international maritime authorities in combating TCOs.

Border Enforcement Security Task Forces (BEST)

Our BEST units employ a threat-based/risk mitigation investigative task force model that recognizes the unique resources and capabilities of all participating law enforcement partners. This model enables each unit to apply a comprehensive approach to combating TCOs, while recognizing the distinctive circumstances and threats facing the various border environments, be it land borders, seaports or airports. Additionally, BEST units are designed to incorporate other DHS-partner agencies, including CBP and the Transportation Security Administration (TSA), and are vehicles for establishing unity of effort, the cornerstone of a successful DHS mission. BEST units further solidify HSI's role as the primary investigative entity for DHS.

We continue to expand the BEST program, which currently operates in 65 locations throughout the United States. BEST leverages more than 1,200 federal, state, local, tribal, and foreign law enforcement agents and officers representing over 200 law enforcement agencies. BEST also provides a co-located space that allows for collaboration in conducting intelligence-driven investigations aimed at identifying, disrupting, and dismantling TCOs that operate in the air, land, and sea environments. In FY 2018, the BEST program nationally accounted for 5,574 criminal arrests, 1,579 administrative arrests, from which prosecutors obtained 3,205 indictments and 2,419 convictions.

Money Laundering Efforts

The Cartels move illicit proceeds, hide assets, and conduct transactions globally. Among the various methods Cartels use to transfer and launder their illicit proceeds are bulk cash smuggling, Trade Based Money Laundering, funnel accounts and professional money launderers,

and misuse of Money Service Businesses (MSB) and emerging payment systems. The Cartels exploit vulnerabilities in the financial system and conduct layered financial transactions to circumvent regulatory scrutiny, which presents difficulties for authorities attempting to distinguish between licit and illicit use of the financial system. HSI has refined our ability to target money laundering and financial violations through various techniques, to include interagency investigations, training and capacity-building, targeted financial sanctions, and direct engagement with at-risk financial institutions and jurisdictions.

U.S. Anti-Money Laundering laws and regulations impose customer identification, recordkeeping, and reporting obligations on covered financial institutions that help deter criminals from moving illicit proceeds through the financial system. These preventive measures also create valuable evidentiary trails for law enforcement to employ during an investigation. As such, HSI has an abundance of investigative tools in our arsenal to disrupt and dismantle Cartel money laundering operations, as well as to discourage new actors from engaging in illicit activity. In furtherance of existing efforts to combat money laundering operations, HSI has implemented a national program to assist field offices in their efforts to identify the means and methods used by Cartels to move, launder, and conceal illicit proceeds. This program provides investigators with funding, training, and specialized investigative support with an emphasis on targeting professional money launderers throughout the world. In addition to its ongoing support of field investigations, HSI continues to work with domestic and foreign law enforcement, regulatory agencies, and non-governmental organizations to enhance cooperation and improve efforts to target money laundering operations and the criminal networks they support.

Our National Bulk Cash Smuggling Center (BCSC), located in Burlington, Vermont, generates long-term, multi-jurisdictional bulk cash investigations by analyzing incident reports

and conducting intelligence-driven operational support to field offices. When contacted by federal, state, and local law enforcement for support, the BCSC assists that jurisdiction as much as possible by engaging the full scope of its law enforcement intelligence data sources and referring requests for assistance to local HSI field offices for immediate response. Since its inception in August 2009, the BCSC has initiated or substantially contributed to over 2,062 investigative leads, which have yielded 2,010 criminal arrests, 1,147 indictments, 677 state or federal convictions, and seizures of bulk cash totaling over \$1.59 billion.

High Intensity Drug Trafficking Area Task Forces

The High Intensity Drug Trafficking Area (HIDTA) Program is administered by the Office of National Drug Control Policy (ONDCP), and provides designated areas with federal funding to support coordinated Federal, state, local, tribal and territorial law enforcement activities that address drug trafficking threats.

HSI, using its combined immigration and customs authorities, leads several HIDTA initiatives along the Southwest Border.

The Organized Crime Drug Enforcement Task Forces (OCDETF) Program allows our Special Agents to partner and collaborate in investigations using our unique and far-reaching authorities to enforce and regulate the movement of carriers, persons, and commodities between the United States and other nations. We have dedicated personnel on 15 out of 16 OCDETF co-located Strike Forces. These Strike Forces logically extend the OCDETF program beyond the creation of prosecutor-led task forces that join together on case-specific efforts and then disband at the end of the investigation. Now, permanent task force teams work together to conduct intelligence-driven, multi-jurisdictional operations against the continuum of priority targets. We

also participate in the OCDETF Fusion Center, which support investigations of TCOs through interagency coordination.

Extraterritorial Criminal Travel Strike Force Program

The HSI Human Smuggling Unit is responsible for managing the Extraterritorial Criminal Travel Strike Force (ECT) program. The ECT Strike Force was created in June 2006 as a joint partnership between HSI and the U.S. Department of Justice, Criminal Division, Human Rights and Special Prosecutions Section (HRSP) to address U.S. security risks posed by transnational human smuggling organizations. The ECT Program is designed to disrupt and dismantle the international and domestic operations of human smuggling organizations, through aggressive investigation and prosecution of criminal travel networks that pose potential threats to U.S. national security and public safety.

The ECT Program focuses on networks meeting certain criteria, including organizations operating in specified geographic locations, prosecutorial viability, national security risk, significantly evolved methods of operation, and links with corrupt foreign government officials or organized crime.

The ECT Program utilizes intelligence methodology to identify and target human smuggling organizations that meet certain criteria. Specifically, those organizations responsible for the smuggling of special interest aliens who may potentially threaten U.S. national security and public safety.

International Partners and Cooperation

ICE HSI works closely with our federal law enforcement and international partners to disrupt and dismantle TCOs. We have 68 offices in 51 countries and are uniquely positioned to utilize established relationships with host country law enforcement, to include the engagement of

Transnational Criminal Investigative Units (TCIUs). These TCIUs are composed of DHS-trained host country counterparts who have the authority to investigate and enforce violations of law in their respective countries. Since our law enforcement special agents working overseas do not possess general law enforcement or investigative authority in host countries, the use of these TCIUs enables ICE to promote direct action in its investigative leads and criminal prosecutions while respecting the sovereignty of the host country and cultivating international partnerships. These efforts, often thousands of miles from the U.S.-Mexico border in countries like Colombia and Panama, essentially act as an outer layer of security for our Southwest Border.

Working with Mexican Authorities

Mexico has proven to be an outstanding partner in the fight against TCOs, taking down the Cartels' top leadership and helping in efforts to dismantle these organizations. ICE's Attaché Office in Mexico City is the largest ICE presence outside of the United States. ICE has coordinated the establishment of TCIUs in Mexico comprised of Mexican law enforcement officers. Through our Attaché in Mexico City and associated sub-offices, HSI assists in efforts to combat transnational drug trafficking, weapons smuggling, human smuggling, and money laundering syndicates in Mexico. ICE Attaché personnel work daily with Mexican authorities to combat these transnational threats. Additionally, ICE—along with other DHS Components—actively works through the Department of State to provide training and technical assistance to our Mexican counterparts. The spirit of collaboration and joint effort between DHS Components and our counterparts in Mexico is unprecedented.

Conclusion

Thank you again for the opportunity to appear before you today and for your continued support of ICE and its law enforcement mission. ICE is committed to stemming cross-border

criminal organizations through the various efforts I have discussed today. I appreciate your interest in these important issues, and look forward to answering your questions.



Testimony of
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United States Public Health Service Commissioned Corps
U.S. Department of Health and Human Services

Before the

Committee on Homeland Security and Governmental Affairs
United States Senate
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Chairman Johnson, Ranking Member Peters, and members of the Committee, it is my honor to appear on behalf of the Department of Health and Human Services (HHS).

My name is Jonathan White. I am a career officer in the U.S. Public Health Service Commissioned Corps, a clinical social worker and emergency manager, and I have served in the Department of Health and Human Services in three administrations. I am presently assigned to the Office of the Assistant Secretary for Preparedness and Response (ASPR), and previously served as the Deputy Director of the Office of Refugee Resettlement (ORR) for the Unaccompanied Alien Children's (UAC) Program.

In my testimony today, I will discuss aspects of the ORR program's policies and administration that I have been involved in since February 2016.

In my time at HHS, I have had the privilege of helping to oversee and support the grantees that provide the actual care for children, as well as the process of placing children with sponsors.

More recently, I served as the Federal Health Coordinating Official (that is, the HHS operational lead) for the interagency mission to reunify children in ORR care as of June 26, 2018 who were separated from their parents at the border by the U.S. Department of Homeland Security (DHS).

I am proud of the work of our team on the reunification mission, and of the care provided every day in the UAC Program to unaccompanied alien children, who are some of the most vulnerable children in our hemisphere.

About the Program

ORR is responsible for the care and temporary custody of UAC who are referred to ORR by other federal agencies. ORR does not apprehend migrants at the border or enforce the immigration laws. Those functions are performed by DHS and the U.S. Department of Justice (DOJ).

The Homeland Security Act of 2002 (HSA) and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), as amended, govern the ORR program. So do certain provisions of the *Flores Settlement Agreement* (FSA).

As defined by the Homeland Security Act, if a child under the age of 18 with no lawful immigration status is apprehended by another federal agency, and no parent or legal guardian is available in the United States to provide care and custody of the child, he or she is considered a UAC and is transferred to ORR for care and custody.

UAC shelters provide housing, nutrition, routine medical care, mental health services, educational services, and recreational activities such as arts and sports. They provide parity with the domestic child welfare system. The facilities are operated by nonprofit grantees, which are licensed to provide care to children by state licensing authorities responsible for regulating such facilities housing children.

The exception is ORR's temporary hard sided influx care facility in Homestead, Florida, which is not required to obtain state licensure because it is located on federally owned property.

However, children who reside at this location generally receive the same level of care and services to UAC as a state-licensed facility.

The UAC program bed capacity has expanded and contracted over the years, driven by fluctuations in the number of children referred and the average time children remain in ORR care. To respond to these fluctuations, HHS has developed processes for bringing both permanent and temporary UAC housing capacity online as needed. HHS has a bed capacity framework with grant and contract mechanisms that provide standard permanent bed capacity, with the ability to quickly add temporary beds, which provides the capability to accommodate changing flows.

The fluctuations in the numbers of children in care are significant. Currently, HHS maintains approximately 14,300 beds. This is up from 6,500 beds on October 1, 2017, but down from more than 15,800 beds on November 15, 2018. HHS continues to update its bed capacity planning to account for the most recently available data, including information from interagency partners, and to leverage available funds to be prepared for changing needs.

HHS cares for all UAC until they are released to a suitable sponsor, which is almost always a parent or close relative, while they await immigration proceedings. UAC may also leave HHS care if they return to their home countries following an immigration judge's order, turn 18 years of age, or gain legal immigration status.

Current State of the Program

In fiscal year (FY) 2018, 49,100 children were referred to ORR by DHS. In FY 2019, ORR has already received referrals of 32,284 UAC (as of March 30), which is an increase over FY 2018 of almost 50%. If this rate of referrals continues, ORR will care for the largest number of UAC in the program's history in FY 2019. Based on the anticipated growth pattern in referrals of UAC from DHS to HHS, HHS is preparing for the need for high bed capacity to continue.

In FY 2018, 92 percent of ORR's referred children came from Honduras, Guatemala, and El Salvador. Children who migrate to the United States from these three countries and Mexico are particularly vulnerable to exploitation, such as forced labor or sex trafficking by human traffickers en route to the United States. Teenagers made up 85 percent of UAC referrals in FY 2018, the remainder being "tender age" children 12 and younger.

In FY 2018, children typically stayed in ORR custody for 60 days. To date, in FY 2019, the average length of care has been 82 days, although we expect this average to decline pursuant to several ORR-issued operational directives. In FY 2018, ORR released 86 percent of children to a sponsor: 42 percent were parents; 47 percent were close relatives such as an aunt, uncle, grandparent, or adult sibling; and 11 percent were more distant relatives or non-relatives such as a family friend.

In FY 2019, as of February, of those children discharged from ORR custody, 92 percent of children were released to individual sponsors and of those sponsors: 46 percent were parents, 45 percent were close relatives, and 9 percent were more distant relatives or non-relatives.

Operational Implementation of Executive Order (EO) 13841 and the *Ms. L.* Court Orders

The President issued EO 13841 on June 20, 2018, and the U.S. District Court for the Southern District of California in *Ms. L. v. ICE*, No. 18-cv-428 (S.D.Cal.) issued its preliminary injunction and class certification orders on June 26, 2018. Among other things, the Court preliminarily enjoined Defendants “from detaining Class Members in DHS custody without and apart from their minor children, absent a determination that the parent is unfit or presents a danger to the child, unless the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child in DHS custody.”

On June 22, 2018, Secretary Azar directed the Office of the Assistant Secretary for Preparedness and Response (ASPR), to help ORR comply with EO 13841. To execute this direction from the Secretary, we formed an Incident Management Team (IMT), which at its largest included more than 60 staff working at HHS headquarters in Washington D.C., and more than 250 field response personnel from ACF, ASPR (including its National Disaster Medical System Disaster Medical Assistance Teams), the U.S. Public Health Service Commissioned Corps, and contractors.

Shortly after the *Ms. L.* Court issued its orders, the Secretary directed HHS—and the IMT in particular—to take all reasonable actions to comply. The orders require the reunification of children in ORR care as of June 26, 2018, with parents who are *Ms. L.* class members. In general, *Ms. L.* class members are parents who were separated from their children at the border by DHS, and who do not meet the criteria for exclusion from the class. For example, parents who have a communicable disease or a criminal history, or who are unfit or present a danger to the child, are excluded from the class.

The IMT faced a formidable challenge at the start of this mission. On the one hand, ORR knew the identity and location of every one of the more than 11,800 children in ORR care as of June 26, 2018, and could access individualized biographical and clinical information regarding any one of those children at any time by logging onto the ORR UAC portal and pulling up the child's case management record. ORR sometimes received information from DHS regarding any separation of the individual child through the ORR UAC portal, on an *ad hoc* basis, for use in ordinary program operations.

On the other hand, ORR had never conducted a forensic data analysis to satisfy the new requirements set forth in the Court’s orders, much less aggregated such rigorous, individualized data analyses into a unified list. As a result, our first task was to identify and develop a list of the children in ORR care who were possible children of potential *Ms. L.* class members.

*Identification of possible children of potential *Ms. L.* class members*

HHS worked closely with DHS, including U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), to try to identify all parents of children in ORR care who potentially met the Court’s criteria for class membership. The determination of class membership involves inter-agency collection and analysis of facts and data to verify parentage, assess the health of the parent, determine the location of DHS apprehension and separation, determine parental fitness, and evaluate whether reunification would present a danger to the child. Moreover, class membership is dynamic and can change with the facts on the ground (for

example, a parent who is excluded from the class based on a communicable disease could be cured after receiving medical treatment).

The interagency data team analyzed more than 60 sets of aggregated data from CBP and ICE, as well as the individualized case management records for children on the ORR UAC Portal. Collectively, hundreds of HHS personnel reviewed the case management records for every child in ORR care as of June 26, 2018, looking for any indication of possible separation. ORR also required every one of its approximately 110 residential shelter programs to provide a certified list, under penalty of perjury, of the children in that program's care that shelter staff had identified as potentially separated. The reconciliation of those three data sources by the interagency data team resulted in the identification and compilation of a list of 2,654 children in ORR care who were potentially separated from a parent at the border by DHS.

The data analysis that yielded the initial list of 2,654 possible children of potential class members was dependent on the information that was available at the time of the analysis.

Going forward, ORR continued to amass new information about the children in ORR care through the case management process. The new information that ORR amassed between July and December 2018 led us to conclude that 79 of the possible children of potential class members were not, in fact, separated from a parent at the border by DHS.

Similarly, the new case management information that ORR amassed between July and December 2018 led us to conclude that a total of 162 other children who were in ORR care as of June 26, 2018—but who we did not initially identify as potentially separated—should be re-categorized and added to the list of possible children of potential class members reported to the *Ms. L.* Court. As a result of the addition of 162 total children through re-categorization, the current reporting of 2,814 possible children of potential *Ms. L.* class members to the *Ms. L.* Court is accurate. That is, we have fully accounted for such children who were in ORR care as of June 26, 2018. To be clear, the count of 2,814 children does not include children who were discharged by ORR before June 26, 2018. Nor does it include separated children referred to ORR care after that date.

It is important to understand that ORR knew the identity, location, and clinical condition of all 162 recategorized children at all times during their stays with ORR. The re-categorizations are for the *Ms. L.* litigation, not clinical reasons. They do not affect the care the children receive from ORR.

Indeed, HHS did not “lose” *any* children at all. The HHS Inspector General found no evidence to the contrary. ORR can determine the location of every child in care at any moment by accessing the UAC Portal case management system. We always know where every child in the care of ORR is.

Reunification of Ms. L. class members with their children

Generally, ORR has a process for releasing UAC to parents or other sponsors that is designed to comply with the HSA, the TVPRA, and the FSA. This process ensures the care and safety of UAC referred to ORR by DHS. Notably, HHS modified and expedited its ordinary process for *Ms. L.* class members and their children as required by the *Ms. L.* Court.

Working in close partnership with colleagues in ICE, DOJ, and the Department of State, we first worked to reunify children with parents in ICE custody. This was an unprecedented effort, requiring a novel process which we developed and which the *Ms. L.* Court approved. Under the compressed schedule required by court order of 15 days for children under the age of 5, and 30 days for children between the ages of 5 and 17, we reunified 1,441 children with parents in ICE custody—all of the children of eligible and available *Ms. L.* class members in ICE custody. Absent red flags that would lead to specific doubts about parentage or about child safety, adults in ICE custody were transported to reunification locations run by ICE, where deployed field teams from HHS interviewed them. During the interviews, HHS sought verbal confirmation of parentage and the desire to reunify, and after that, HHS transported the child for physical reunification with the parent in ICE custody. Some reunified family units remained in ICE family detention, while others were released by ICE to the community, after connecting them with nonprofits serving immigrant families.

For children whose parents had been in ICE custody but had been released to the interior of the United States, we implemented an expedited reunification process, confirming parental relationship in any case where we had doubts about parentage, addressing any “red flags” for child safety, and then transporting the child for physical reunification with the parent.

For parents who had departed the United States, we developed a different operational plan, which was also approved by the *Ms. L.* Court. First, HHS identified and resolved any “red flags” or—doubts about parentage or child safety and well-being. ORR care provider case managers established contact with the parents in their home countries, and provided contact information for all the parents to the American Civil Liberties Union (ACLU), which serves as plaintiffs’ counsel for the *Ms. L.* class. The ACLU counseled parents about their options and their rights, and then obtained from the parents their desire for either reunification in their home country, or waiving reunification for the child to undergo standard ORR sponsorship processes. Once we received a parent’s desire for reunification, we worked with DOJ and ICE to expeditiously resolve the children’s immigration cases, and worked with the consulates and embassies of the child’s home country to prepare their return. HHS and ICE coordinated with the ACLU’s steering committee for the *Ms. L.* litigation, the government of the home country, and the child’s family to ensure safe physical reunification, and then transported the child to his/her country and into the care of his/her parents.

Of the 2,814 children reported to the *Ms. L.* Court, as of this morning we have reunified 2,160 with the parent from whom they were separated. Another 595 children have left ORR care through other appropriate discharges—in most cases, release to a family sponsor such as the other parent, an adult sibling, an aunt or uncle, a grandparent, a more distant relative, or a family friend.

Of the 2,814 children reported to the *Ms. L.* Court, there are 16 children still in ORR care who were separated but cannot be reunified with their parent, because ORR has made a final determination that the parent meets the criteria for exclusion from the class or is not eligible for reunification. That is, the parent has a criminal history, or the parent is otherwise unfit or poses an unacceptable risk to the safety and well-being of the child, such as when a case file review shows that the child has made credible allegations of abuse by the parent. There are 29 children

still in ORR care whose parents are outside the U.S. who have waived reunification, and chosen for their children to remain in the U.S. and go to a sponsor in this country under the ordinary TVPRA process. There are 9 children in care where further review determined that the child was not a separation. There are three children in care where parents are in the U.S. and have waived reunification.

As of this morning, of the 2,814 children reported to the *Ms. L.* Court, there are two children who HHS cannot reunify unless there is either a change in the parent's status, or the parent conveys to us their wishes through ACLU. In one of those cases, the ACLU has advised that the resolution of the parent's wishes will be delayed and the other case, the ACLU could not obtain the parental preference. We cannot reunify those children until their parent's legal counsel allows us to do so.

Like everyone on the team that worked for months to identify and then reunify the separated children, I look forward to the day when we can say that all of those children are back with their families.

As I indicated earlier in my testimony, the 2,814 children reported to the *Ms. L.* Court do not include all children who have ever been separated at the border by DHS and referred to ORR. It is only the number of possible children of potential class members who were in ORR care as of June 26, 2018. It is based on how the *Ms. L.* Court defined the class.

There were, without any doubt, other children who were separated from their parent(s) at the border by DHS and referred to ORR, and who were discharged to a sponsor pursuant to the TVPRA process before June 26, 2018. Based on ORR's statistics for the UAC program, the vast majority of the sponsors were probably parents or close relatives. To the extent it is even possible to count such children, HHS has not tried to do so because HHS has extremely limited resources and such a count would not help HHS fulfill any current UAC program requirements. Moreover, HHS has no jurisdiction over the children once they are released to sponsors, and, except in very limited circumstances, intervention by HHS after discharge would not serve a child welfare interest.

In Closing

ORR's UAC Program provides care and services to UAC every day. At HHS, we are proud of the work we do to provide that care to children consistent under the law, and with the values of the United States about how we care for vulnerable children. In the case of this distinct population of children separated from their parents following DHS apprehension, and prior to placement at ORR, we at HHS have been working hard on an unprecedented mission to expedite safe reunifications of children with their parents wherever possible.

The UAC program's mission is a child welfare mission—we seek to serve the best interest of each individual child. This has guided us also in our work to have each separated child back in his or her parent's arms, or discharged safely to another sponsor where that is the parent's wish. We have done our best as a department to achieve that goal.

Thank you, and I will be happy to answer any questions you may have.



Department of Justice

STATEMENT OF

**GREG CHERUNDOLO
CHIEF OF OPERATIONS
OFFICE OF GLOBAL ENFORCEMENT
DRUG ENFORCEMENT ADMINISTRATION
U.S. DEPARTMENT OF JUSTICE**

BEFORE THE

**UNITED STATES SENATE HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS COMMITTEE**

FOR A HEARING ENTITLED

**UNPRECEDENTED MIGRATION AT THE U.S. SOUTHERN BORDER:
PERSPECTIVES FROM THE FRONTLINE**

PRESENTED

APRIL 9, 2019

**Statement of Greg Cherundolo
Chief of Operations, Office of Global Enforcement
Drug Enforcement Administration
Before the Committee on Homeland Security and Governmental Affairs
United States Senate
April 9, 2019**

Mr. Chairman and distinguished Members of the committee – on behalf of Acting Drug Enforcement Administrator Uttam Dhillon and the men and women of the Drug Enforcement Administration (DEA), thank you for holding this hearing on Mexican Cartels and Border Security, and for allowing DEA to share its views on this very important topic. It is an honor to be here to discuss an issue that is important to our country and its citizens, our system of justice. This issue is one to which I have dedicated my professional life to combatting, and about which I personally feel very strongly.

I joined DEA in 1997 as a Special Agent and was initially assigned to the Washington field Division. It has been my privilege to enforce the Controlled Substances Act (CSA) on behalf of the American people for over 22 years. My perspective on Mexican Cartels is informed by my years of experience as a Special Agent in the trenches, working in the Washington and Atlanta Field Divisons, Special Operations Division, Savannah Resident Office, as an Assistant Special Agent in Charge in Richmond, as Special Agent in Charge of DEA Training, Acting Chief of Staff and now as the Chief of Operations for DEA.

As a career Special Agent, I have devoted my professional life to enforcing the law and keeping our communities safe and free from harmful illicit substances. Our fundamental responsibility is to enforce the controlled substances laws and regulations of the United States. We use all criminal, civil, and administrative tools outlined in the CSA to enforce the laws and regulations involving the growing, manufacturing, and distribution of controlled substances against organizations that act outside of that law and their members. We also provide active advisory support for, and collaborate with, allied nations battling illicit trafficking in their own jurisdictions; and recommend and support programs aimed at reducing the availability of illicit controlled substances on the domestic and international markets. I believe, now more than ever in light of the current opioid epidemic, that law enforcement officers must remain steadfast in their pursuit of keeping harmful and often times deadly substances out of the United States, and holding accountable those who violate the laws of the United States.

OVERVIEW

Today, we are here to discuss the drug threat in the United States, and the Mexican Transnational Criminal Organizations (TCOs) that contribute to this threat. Illicit drugs—ranging from marijuana to fentanyl—remain a significant threat to public health and safety. Undoubtedly, Mexican TCOs are one of the greatest criminal drug threats to the United States. As I will explain in more detail, DEA has prioritized its resources and partnered with domestic and international entities to combat these threats. DEA will continue executing effective methods for

reducing the national drug threat and dismantling the criminal organizations that contribute to that threat.

UNITED STATES DRUG THREATS

Illicit drugs, as well as the transnational and domestic criminal organizations that traffic them, continue to represent significant threats to public health, law enforcement, and national security in the United States. Drug overdose deaths are now the leading cause of injury death in the United States. Every year since 2011, drug overdose deaths have outnumbered deaths by firearms, motor vehicle crashes, suicide, and homicide. In 2017, approximately 192 people died every day from drug overdoses.¹ The opioid threat (controlled prescription drugs, synthetic opioids, heroin, and other illicit substances) has reached epidemic levels, affecting large portions of the United States. Meanwhile, as the ongoing opioid crisis justly receives national attention, the methamphetamine threat remains prevalent; the cocaine threat has rebounded; New Psychoactive Substances (NPS) are still a challenge; and the domestic marijuana situation continues to evolve.

FENTANYL

Illicit fentanyl and fentanyl-related substances (analogues), often sourced from China and to a lesser but still significant extent Mexico, are now the most lethal category of opioids used in the United States. Traffickers, wittingly or unwittingly, are increasingly selling illicit fentanyl and fentanyl-related substances to users without mixing it with any other controlled substances and are also increasingly selling fentanyl and fentanyl related-substances in the form of counterfeit prescription pills. Fentanyl suppliers continue to experiment with new fentanyl-related substances and adjust supplies in attempts to circumvent new regulations imposed by the United States, China, and Mexico. Highly pure and potent fentanyl is transported across the country through mail courier services. While significantly less pure, fentanyl is also smuggled across the Southwest Border (SWB) in kilogram quantities and stored at stash houses, often with other drugs. It is transported and concealed in spare tires, gas tanks, and hidden compartments.

HEROIN

There are four major heroin-producing regions in the world, but heroin bound for the U.S. market originates predominantly from Mexico and to a lesser degree, Colombia.² In addition to dominating traditional markets in the western United States, Mexican organizations are now the most prominent wholesale heroin traffickers in the DEA's Chicago, New Jersey, Philadelphia, and Washington, D.C. Field Division areas of responsibility, and have greatly expanded their presence in the New York City area. While heroin use continues to increase, the occurrence of heroin mixed with illicit fentanyl is also increasing. Record levels of opium poppy cultivation

¹ U.S. Department of Justice, Drug Enforcement Administration, 2018 National Drug Threat Assessment (NDTA), October 2, 2018, available at <https://www.dea.gov/documents/2018/10/02/2018-national-drug-threat-assessment-ndta>.

² *Id.*

and heroin production in Mexico allow Mexican TCOs to supply high-purity, low-cost heroin, even as U.S. use has continued to increase.

METHAMPHETAMINE

Methamphetamine remains prevalent and widely available, with most of the methamphetamine available in the United States being produced in Mexico and smuggled across the SWB. Domestic production occurs at much lower levels than in Mexico, and seizures of domestic methamphetamine laboratories have declined steadily for many years, most likely due to the increasing availability of high-purity, high-potency Mexican methamphetamine, and sustained domestic counter-methamphetamine enforcement efforts.³

Although methamphetamine is available throughout the United States, the highest availability is in the West and Midwest regions of the country. In recent years, methamphetamine has been increasing in prevalence in areas that have, historically, not been major markets for the drug, particularly the Northeast. The majority of DEA Field Divisions indicated methamphetamine availability was high throughout the United States. In 2017, 13 of 23 DEA Field Divisions surveyed reported that methamphetamine availability was high, while four other Field Divisions reported that methamphetamine availability was moderate. Six Field Divisions reported that methamphetamine was more available compared to the previous reporting period, and the remaining Field Divisions reported stable availability in 2017.

COCAINE

Cocaine availability and use in the United States have rebounded and coca cultivation and cocaine production have reached record levels in Colombia. As a result, past-year cocaine initiates and cocaine-involved overdose deaths are exceeding 2007 benchmark levels.⁴ According to the Centers for Disease Control and Prevention (CDC), there were 13,942 cocaine-involved overdose deaths during 2017.⁵ Simultaneously, the increasing presence of fentanyl in the cocaine supply is exacerbating the impact of the re-emerging cocaine threat, particularly the overdose rate.

CONTROLLED PRESCRIPTION DRUGS

Controlled Prescription Drugs (CPDs) are the second most commonly abused substance in the United States.⁶ As CPD abuse has increased significantly, traffickers are now disguising other opioids as CPDs in attempts to gain access to new users. Most individuals who report misuse of

³ *Id.*

⁴ *Id.*

⁵ See CDC, Provisional Counts Of Drug Overdose Deaths As Of 8/6/2017; see also National Institute on Drug Abuse, Overdose Death Rates (Revised September, 2017).

⁶ *Id* at 1.

prescription pain relievers cite physical pain as the most common reason for non-medical use; these misused pain relievers are most frequently obtained from a friend or relative.⁷

NEW PSYCHOACTIVE SUBSTANCES

The number of NPS continues to increase worldwide, but remains a limited threat in the United States compared to other widely available illicit drugs. China remains the primary source for the synthetic cannabinoids and synthetic cathinones that are trafficked into the United States. The availability and popularity of specific NPS in the United States continues to change every year, as traffickers experiment with new and unregulated substances.

MARIJUANA

Marijuana remains the most commonly used illicit drug in the United States. The overall landscape continues to evolve; although still illegal under Federal law, more states have passed legislation regarding the possession, use, and cultivation of marijuana and its associated products. Although seizure amounts coming across the SWB have decreased in recent years, Mexico remains the most significant foreign source for marijuana available in the United States. Domestic marijuana production continues to increase, as does the availability and production of marijuana-related products.⁸

THE FENTANYL CRISIS

Under U.S. federal law, fentanyl is a Schedule II controlled substance, which is lawfully produced and distributed in the United States by manufacturers of prescription drugs approved by the Food and Drug Administration (FDA) and is widely used in medicine. It is an extremely potent analgesic, used for anesthesia and for pain control in people with serious pain problems; in such pain control cases, it is generally indicated only for use in people who have a high opioid tolerance. Illicit fentanyl, fentanyl-related substances, and their immediate precursors are often produced in China. From China, these substances are shipped primarily through express consignment carriers or international mail directly to the United States, or, alternatively, to TCOs in Mexico, Canada, and the Caribbean. Once in the Western Hemisphere, fentanyl and fentanyl-related substances are prepared for mixing into the heroin supply, other non-opioid drugs, or pressed into a tablet form, and then moved into the illicit U.S. market, where demand for prescription opioids and heroin remain at epidemic proportions. In some instances, drug trafficking organizations have industrial pill presses shipped directly into the United States from China, which allows them to press fentanyl pills domestically. Mexican TCOs have seized upon this business opportunity because of the profit potential of synthetic opioids, and have invested in growing their share of this market. Because of its low dosage range and potency, one kilogram of fentanyl purchased in China for \$3,000 - \$5,000 can generate upwards of \$1.5 million in revenue on the illicit market. Such is the potency of fentanyl, that consumption of as

⁷ *Id.*

⁸ *Id.*

little as 2 milligrams of fentanyl can result in a fatal overdose, meaning that a kilogram of fentanyl has the potential of causing lethal overdoses of 500,000 people.⁹

According to the National Forensic Laboratory Information System (NFLIS), from January 2013 to December 2017, there were roughly 120,000 fentanyl exhibits identified by federal, state, and local forensic laboratories.¹⁰ During 2016, there were 37,259 fentanyl reports compared to 1,043 reports in 2013, an exponential increase over the past four years; and, since 2016, there have been 60,615 fentanyl reports identified in 2017, a 63 percent increase.¹¹ The consequences of fentanyl misuse are often fatal and occur amongst a diverse user base. According to CDC's National Vital Statistics System, the age-adjusted rate of drug overdose deaths involving synthetic opioids other than methadone (over 90 percent of drugs in this category were fentanyl) increased by 800 percent between 2013 and 2017, from 1.0 to 9.0 per 100,000.¹²

Even though fentanyl, fentanyl-related substances, and other NPS have been controlled under Schedule I or II of the CSA, entrepreneurs procure/create new synthetic compounds with relative ease, by merely altering the chemical composition of the substances.¹³ Over the past several years, DEA has identified numerous illicit fentanyl-class substances and hundreds of synthetic drugs from at least eight different drug classes, the vast majority of which are manufactured in China.

Using published data from the patent and scientific literature as their guide, clandestine chemists have continued to develop and synthesize new synthetic opioids, cannabinoids, and cathinones for the illicit market. Clandestine chemists can easily continue developing and synthesizing new synthetic opioids that do not appear on any schedule of controlled substances. Sadly, these substances are often first discovered when DEA receives reports from local hospitals and coroners in connection with a spate of overdoses. When DEA takes action to temporarily schedule a substance, traffickers begin selling new versions of their products made from new, non-controlled substances in as little as several weeks. Temporary scheduling alone is not enough to address this epidemic. The existing process to temporarily schedule a substance is reactionary, and not agile enough to keep up with bad actors engineering illicit substances for the express purpose of skirting our laws.

⁹ U.S. Department of Justice, Drug Enforcement Administration, 2017 National Drug Threat Assessment, October, 2017, pg. 57.

¹⁰ U.S. Department of Justice, DEA, NFLIS, actual data queried on October 13, 2017.

¹¹ U.S. Department of Justice, DEA, NFLIS, actual data queried on October 18, 2018.

¹² Holly Hedegaard, M.D., Arialdi M. Miniño, M.P.H., and Margaret Warner, Ph.D. Drug Overdose Deaths in the United States, 1999–2018. <https://www.cdc.gov/nchs/products/databriefs/db329.htm>

¹³ On February 6, 2018, DEA published a final order in the Federal Register scheduling all fentanyl-related substances (i.e., fentanyl analogues) in Schedule I on an emergency basis. The final order was made effective on the date of publication.

Illicit fentanyl, fentanyl analogues, and other NPS are relatively inexpensive, available via the Internet, and are often manufactured in China where they may be shipped (via the international postal system or express consignment couriers) to the United States; alternatively, they may be shipped directly to TCOs in Mexico, Canada, and the Caribbean. Once in the Western Hemisphere, fentanyl and fentanyl-related substances in particular are combined with heroin, cocaine, and other substances, and/or pressed into counterfeit pills made to look like controlled prescription drugs containing oxycodone or hydrocodone. They are then sold online on anonymous darknet markets, and even on overtly-operated websites.

MEXICAN TRANSNATIONAL CRIMINAL ORGANIZATIONS

Mexican TCOs remain the greatest criminal drug threat to the United States as a whole. By no means is their revenue limited to illicit drug production and trafficking. They also engage in fuel theft, kidnapping, extortion, the smuggling of illicit goods and people, and other illegal activity. The Sinaloa Cartel maintains the most expansive footprint in the United States, while Cartel Jalisco Nueva Generacion's (CJNG) domestic presence has significantly expanded in the past few years. Although 2017 drug-related murders in Mexico surpassed previous levels of violence, U.S.-based Mexican TCO members generally refrain from extending inter-cartel conflicts into the United States.

Although offshoots from previously established TCOs continue to emerge, DEA assesses the following six Mexican TCOs as having the greatest drug trafficking impact on the United States: Sinaloa Cartel, CJNG, Juarez Cartel, Gulf Cartel, Los Zetas Cartel, and Beltran-Leyva Organization (BLO). Each of these TCOs maintains drug distribution cells in designated cities across the United States that either report directly to TCO leaders in Mexico or indirectly through intermediaries. The following is a background on each:

Sinaloa Cartel – The Sinaloa Cartel, based in the Mexican State of Sinaloa, is one of the oldest and more established drug trafficking organizations in Mexico. The Sinaloa Cartel controls drug trafficking activity in various regions in Mexico, particularly along the Pacific Coast. Additionally, it maintains the most expansive international footprint compared to other Mexican TCOs. The Sinaloa Cartel exports and distributes wholesale amounts of methamphetamine, marijuana, cocaine, heroin, and fentanyl in the United States by maintaining distribution hubs in cities that include Phoenix, Los Angeles, Denver, and Chicago. Illicit drugs distributed by the Sinaloa Cartel are primarily smuggled into the United States through crossing points located along Mexico's border with California, Arizona, New Mexico, and West Texas.

Jalisco New Generation Cartel – CJNG, based in the city of Guadalajara in the Mexican state of Jalisco, is the most recently formed of the six TCOs. With drug distribution hubs in the U.S. cities of Los Angeles, New York, Chicago, and Atlanta, it is one of the most powerful and fastest growing cartels in Mexico and the United States. CJNG smuggles illicit drugs into the United States by accessing various trafficking corridors along the SWB to include Tijuana, Juarez, and Nuevo Laredo. CJNG's rapid expansion of its drug trafficking activities is characterized by the organization's willingness to engage in violent confrontations with Mexican Government security forces and rival cartels. Like most major Mexican TCOs, CJNG is a poly-drug

trafficking group, manufacturing and/or distributing large amounts of cocaine, heroin, methamphetamine, and fentanyl. CJNG reportedly has a presence in 22 of 32 Mexican states.

Juarez Cartel – The Juarez Cartel is one of the older Mexican TCOs. The Mexican State of Chihuahua, south of West Texas and New Mexico, represents the traditional area of operation of the Juarez Cartel. The Juarez Cartel endured a multi-year turf war with the Sinaloa Cartel, which, at its height in mid- 2010, resulted in many drug-related murders in Chihuahua. Though not as expansive as its rival Sinaloa Cartel, the Juarez Cartel continues to impact United States drug consumer markets primarily in El Paso, Denver, Chicago, and Oklahoma City. The Juarez Cartel mainly traffics marijuana and cocaine though recently it has expanded to heroin and methamphetamine distribution in the United States. Recent law enforcement reporting indicates opium cultivation overseen by the Juarez Cartel has increased significantly in the State of Chihuahua since 2013, outpacing marijuana cultivation in some regions.

Gulf Cartel – The Gulf Cartel has been in operation for decades. With a traditional power base in the Mexican State of Tamaulipas, the Gulf Cartel concentrates primarily on marijuana and cocaine trafficking, but has also recently expanded into heroin and methamphetamine. Due to its influence over areas in northeast Mexico, the Gulf Cartel smuggles a majority of its drug shipments into South Texas through the border region between the Rio Grande Valley and South Padre Island. The Gulf Cartel maintains a presence in Atlanta, and holds key distribution hubs in Houston and Detroit.

Los Zetas Cartel – Los Zetas formed as an independent cartel in early 2010 when it officially splintered from the Gulf Cartel. At the time of the rupture, Los Zetas controlled drug trafficking in large parts of eastern, central, and southern Mexico. However, due to pressure from rival cartels, Mexican security forces, and internal conflicts, the influence of Los Zetas has lessened significantly in recent years. Los Zetas are currently divided into two rival factions – the Northeast Cartel (Cartel del Noreste, or CDN), representing a rebranded form of mainstream Zetas, and the Old School Zetas (Escuela Vieja or EV), which is a breakaway group. Members of Los Zetas smuggle the majority of their illicit drugs through the border area between Del Rio and Falcon Lake, Texas, with a base of power in Nuevo Laredo, Mexico. Los Zetas' members currently traffic cocaine, heroin, methamphetamine, and marijuana through key distribution hubs in Laredo, Dallas, and New Orleans, and have a known presence in Atlanta.

Beltran-Leyva Organization – The BLO asserted its independence after the Beltran-Leyva brothers and their network of drug trafficking associates split from the Sinaloa Cartel in 2008. Though all the Beltran-Leyva brothers have now been killed or arrested, remnants of their organization continue to operate in various parts of Mexico, including the States of Guerrero, Morelos, Nayarit, and Sinaloa. While these splinter groups function autonomously, they are still regarded as being under the general umbrella of BLO. The most prominent of these subgroups, Los Guerreros Unidos, continues to operate independently thanks in large part to its role in the heroin trade. BLO subgroups rely on their loose alliances with CJNG, the Juarez Cartel, and Los Zetas for access to drug smuggling corridors along the SWB. BLO members primarily traffic marijuana, cocaine, heroin, and methamphetamine, and maintain distribution centers in Phoenix, Los Angeles, Chicago, and Atlanta.

MONEY LAUNDERING

In 2017, U.S. law enforcement officials reported over 2,200 bulk cash seizure events, totaling more than \$193 million, according to the National Seizure System (NSS).¹⁴ This is a 56 percent decrease from the previous year's \$437.9 million in reported bulk cash seizures. For Calendar Year 2017, California, Ohio, and Arizona reported the highest dollar amounts in bulk cash seizures for a combined total of \$138.8 million. This amount decreased by approximately 49 percent in comparison to the previous year's top three grossing states for seizures. Gross amount of bulk cash seized has steadily decreased since 2010.

Most bulk currency smuggled into California from other states is assessed to be suspected payments for drug shipments. The majority of bulk currency is moved from Northern California to Southern California and eventually transported across the border into Mexico using privately owned vehicles and commercial tractor trailers. Large amounts of cash continue to be interdicted along major highway corridors, with the cash typically concealed in hidden vehicle compartments or among legitimate cargo. Los Angeles remains a haven for drug trafficking organizations to launder their proceeds, due to the numerous banks, businesses with ties to Mexico, and check cashing centers present in the area.

International airports throughout California are also significant transit points for traffickers smuggling bulk cash derived from drug sales. In these instances, cash can be found in checked or carry-on bags, either loose or in plastic heat or vacuum sealed bags, or else concealed on the passenger's person. In addition, numerous undeclared quantities of cash are detected at mail facilities within shipping boxes originating from other U.S. locations. These boxes, sometimes supplied by the mail service, delivery businesses or express consignment services are then shipped via ground and air to destinations in California.

Figure 133. Top Three States for Bulk Currency Seizures (in USD), 2012-2017.						
Rank	2012	2013	2014	2015	2016	2017
1	New York \$212,038,936	California \$153,944,323	California \$124,323,437	California \$104,810,607	California \$57,110,462	California \$36,993,572
2	California \$130,694,737	New York \$113,815,107	New York \$48,727,482	Texas \$44,211,942	Florida \$45,682,687	Ohio \$20,807,872
3	Texas \$67,202,140	Texas \$45,571,571	Georgia \$36,425,523	Florida \$43,144,356	Texas \$36,087,822	Arizona \$13,444,481

Source: El Paso Intelligence Center/National Seizure System

¹⁴ The information reported to NSS by contributing agencies does not necessarily reflect total seizures nationwide. Federal law enforcement agencies are required to report seizures that are equal to \$10,000 USD and above, while report for state and local agencies is voluntary. NSS is a live database and the data can change from year to year.

Mexican TCOs are increasingly utilizing U.S.-based Asian money laundering organizations to facilitate drug money laundering. Regardless of the money laundering method – Trade Based Money Laundering (TBML), mirror (more commonly known as Hawala), or bulk cash movement – the participation of Asian money launderers has become more prominent in some areas. The shift towards Chinese and Asian money launderers is believed to be, in part, due to the natural relationship created by the large volume of both licit and illicit trade goods and chemicals imported from China. The use of an Asian money broker simplifies the money laundering process and streamlines the purchase of precursor chemicals and paraphernalia utilized in manufacturing drugs for street sales.

Aside from Asian money laundering organizations, other TCO networks maintain the capability across multiple states and jurisdictions to buy and sell commodities or services in the United States that assist in the movement of illicit proceeds in and through the United States. Federal, state, local, tribal, and territorial agencies routinely recover billions of dollars of illicit proceeds annually, a portion of which is attributable to TCOs. As an example from June 2017, 11 individuals were charged with laundering more than \$40 million in drug proceeds on behalf of Mexican TCOs. In exchange for kickbacks, managers, and employees of a number of Atlanta-area money remitters reportedly laundered purported drug proceeds to Mexico by breaking the transactions into thousands of smaller transactions and by listing fake sender information. Several of the money remitters allegedly served as the Bank Secrecy/Anti-Money Laundering Compliance Officers for their respective stores, and were responsible for detecting and reporting these types of illicit financial transactions.

MEXCIAN TCO STRUCTURE, METHOD, AND VIOLENCE

Mexican TCO activity in the United States is mainly overseen by Mexican nationals or U.S. citizens of Mexican origin. U.S.-based TCO members of Mexican nationality enter the United States legally and illegally, and often seek to conceal themselves within densely populated Mexican-American communities. Mexican TCO members operating in the United States often share familial ties with, or can be traced back to, the natal region of leading cartel figures in Mexico. U.S.-based TCO members may reside in the United States prior to being employed by a Mexican TCO. In some cases, U.S.-based TCO members are given high-ranking positions within the organization upon returning to Mexico after years of successful activity in the United States.

U.S.-based Mexican TCOs are composed of various compartmentalized cells assigned with specific functions, such as drug distribution or transportation, consolidation of drug proceeds, or money laundering. Mexican TCO operations in the United States typically function as a supply chain; operators in the chain are aware of their specific function, but are unaware of other aspects of an operation. In most cases, individuals hired to transport drug shipments within the United States are independent third-party “contractors” who may be working for multiple Mexican TCOs. There are increasing numbers of these transportation groups in some areas, and in many cases, they transport smaller shipments.

U.S.-based Mexican TCO members generally coordinate the transportation and distribution of bulk wholesale quantities of illicit drugs to U.S. markets while retail-level distribution is mainly handled by smaller local groups and street gangs not directly affiliated with Mexican TCOs. In some scenarios, Mexican TCOs collaborate with local criminal groups and gangs across the United States to distribute and transport drugs at the retail level. Mexican TCOs transport the majority of illicit drugs into the United States across the SWB using a wide array of smuggling techniques. The most common method employed by these TCOs involves transporting illicit drugs through U.S. POEs in passenger vehicles with concealed compartments or commingled with legitimate goods on tractor trailers.

Other cross-border smuggling techniques employed by Mexican TCOs include the use of subterranean tunnels, which originate in Mexico and lead into safe-houses on the U.S. side of the border. Underground tunnels are mainly used to smuggle ton quantities of marijuana, although there are instances of other illicit drugs commingled in shipments. Tunnels seized and destroyed by U.S. law enforcement authorities along the SWB are primarily found in California and Arizona, and are generally associated with the Sinaloa Cartel. Mexican TCOs also transport illicit drugs to the United States aboard commercial cargo trains and passenger buses. To a lesser extent, Mexican TCOs also use maritime vessels off the coast of California. Mexican TCOs also rely on traditional drug smuggling methods, such as the use of backpackers, or “mules,” on clandestine land trails to cross remote areas of the SWB into the United States.

Mexican TCOs exploit various aerial methods to transport illicit drugs across the SWB. These methods include the use of ultralight aircraft and unmanned aerial systems (UASs) (sometimes referred to as “drones”) to conduct air drops. Ultralights are primarily used to transport marijuana shipments, depositing the drugs in close proximity to the SWB. Currently, UASs can only convey small multi-kilogram amounts of illicit drugs at a time and are therefore not commonly used, though there is potential for increased growth and use. Mexican TCOs also use UASs to monitor the activity of U.S. law enforcement along the SWB to identify cross-border vulnerabilities.

Drug-related murders in Mexico continue to reach epidemic proportions. U.S.-based Mexican TCO members, however, generally refrain from inter-cartel violence so as to avoid law enforcement detection and scrutiny, resulting in little spillover violence in the United States. Mexican TCO-related acts of violence do occur in parts of the United States, particularly along the SWB; however, they are less frequent and mainly associated with ‘trafficker-on-trafficker’ incidents.

DEA RESPONSE TO MEXICAN DRUG TRAFFICKING

DEA is combating the threat both domestically and internationally. DEA prioritizes its resources by targeting Consolidated Priority Organization Targets (CPOTs) and Priority Target Organizations (PTOs), which are the most significant international and domestic drug trafficking and money laundering organizations. We partner with federal, state, local, tribal, and international entities to target these identified threats utilizing a range of programs.

Special Operations Division

Established in 1994, the Special Operations Division (SOD) is a DEA-led multi-agency operations coordination center with participation from Federal law enforcement agencies, the Department of Defense (DOD), the Intelligence Community, and international law enforcement partners. SOD's mission is to establish strategies and operations to dismantle national and international trafficking organizations by attacking their command and control communications. Special emphasis is placed on those major drug trafficking organizations that operate across jurisdictional boundaries on a regional, national, and international level.

Heroin-Fentanyl Enforcement Teams

Utilizing the appropriations under the Consolidated Appropriations Act of 2017 (P.L. 115-31), DEA has created six new heroin-fentanyl enforcement teams to combat trafficking in heroin, fentanyl, and fentanyl analogues. The establishment of the teams began in January 2018, and they were located in some of the regions hardest hit by the opioid epidemic: New Bedford, Massachusetts; Charleston, West Virginia; Cincinnati, Ohio; Cleveland, Ohio; Raleigh, North Carolina; and Long Island, New York. Thanks to the robust Consolidated Appropriations Act of 2018 (P.L. 115-141) appropriation, DEA will be creating six additional heroin-fentanyl teams. In determining the locations for these teams, DEA will consider multiple factors, including rates of opioid mortality, level of heroin and fentanyl seizures, and where additional resources would make the greatest impact in addressing the ongoing threat. While the teams will be based in specific cities, their investigations will not be geographically limited. DEA has always pursued investigations wherever the evidence leads and will continue to do so.

International Enforcement: Sensitive Investigative Units

A significant component of DEA's International Drug Enforcement Priorities is to support and expand a key element of DEA's international efforts: the Sensitive Investigative Unit (SIU) program. DEA's SIU program which includes nine specialized units in the Western Hemisphere, including Mexico, helps build effective and vetted host nation units capable of conducting complex investigations targeting major TCOs.

International Enforcement: Bilateral Investigations Units

Bilateral Investigations Units (BIUs) are one of DEA's most important tools for targeting, disrupting, and dismantling significant TCOs. The BIUs have used extra-territorial authorities to infiltrate, indict, arrest, and convict previously "untouchable" TCO leaders involved in drug trafficking.

El Paso Intelligence Center

The El Paso Intelligence Center (EPIC) is a national intelligence center focused on supporting law enforcement efforts in the Western Hemisphere, with a significant emphasis on the SWB. Through its 24-hour watch function, EPIC provides law enforcement officers, investigators, and

analysts immediate access to participating agencies' databases. This function is critical in the dissemination of relevant information in support of tactical and investigative agencies, deconfliction, and officer safety. EPIC also provides significant intelligence support to state and local law enforcement agencies, especially in the areas of clandestine laboratory investigations and highway interdiction.

Fentanyl Signature Profiling Program

The overarching goal of the Fentanyl Signature Profiling Program (FSPP) is to provide new insights in support of ongoing DEA investigations by providing both real-time data from the in-depth analyses of seized samples and unique science-based forensic investigative leads on seizures where linkages were unknown or only suspected. For instance, examples from qualified seizures throughout DEA (e.g., exhibits containing a sufficient amount of fentanyl necessary for in-depth testing) are automatically submitted to DEA laboratories for FSPP testing; each profiled sample is then compared to all other such fentanyl submissions. If linkages between samples are identified, this information is communicated to the appropriate case agent to advance the investigation. Since the program's implementation, over 500 illicit fentanyl samples have been examined, resulting in the establishment of several sets of seizure linkages tying separate cases and seizures together.

UNITED STATES – MEXICO LAW ENFORCEMENT ENGAGEMENT

The Department and DEA continue to expand the robust relationship between Mexico and the United States, particularly with regard to countering the threat from heroin and synthetic opioids. DEA has developed a U.S.-Mexico bilateral heroin strategy to increase intelligence sharing, coordination of investigations, training, sharing of forensic information, and the control of precursor chemicals. DEA's Mexico City Country Office has engaged the interagency within the U.S. Embassy through creation of a Heroin Fentanyl Working Group (HFWG). The HFWG, first convened in April 2015, meets on a monthly basis and synchronizes interagency efforts and capabilities. In early 2016, this forum became part of the Office of National Drug Control Policy's (ONDCP) Heroin Availability Reduction Plan (HARP) implementation as a video teleconference, co-chaired by Mission Mexico and ONDCP and regularly attended by the National Security Council, DEA, DOD, Department of Homeland Security (DHS) (Immigration and Customs Enforcement (ICE)/Homeland Security Investigations (HIS)) and the Department of State's Bureau of Western Hemisphere Affairs and Bureau of International Narcotics and Law Enforcement Affairs (INL). This one-hour monthly forum has become the most effective tool for synchronizing policy formulation and implementation between Mission Mexico and ONDCP. The HFWG has allowed the Federal government to speak with one voice and maintain critical security relationships with our Mexican partners. The HFWG has enabled close coordination on efforts to develop accurate Mexican heroin yield estimates, improve the Government of Mexico's poppy eradication efforts, support investigations of fentanyl seizures, track ongoing clandestine lab training, and reinforce interdiction efforts.

DEA also participates in the North American Drug Dialogue (NADD), a trilateral forum between the United States, Mexico, and Canada. Chaired by ONDCP and INL, the NADD provides a

framework for expanding cooperation on the heroin and fentanyl problem across the entire continent. For example, as a result of the NADD, and with funding from INL, the Royal Canadian Mounted Police (RCMP) has provided fentanyl detection training to Mexican Federal Police (PF) and canine units affiliated with Mexico's Tax Administration Service (SAT), which performs a customs function.

DEA's presence in Mexico represents our largest international footprint. The ability to have DEA Special Agents assigned to 11 different offices throughout Mexico is a reflection of the level of cooperation that we continue to enjoy with our Mexican counterparts. DEA supports bilateral investigations with the Government of Mexico by providing information and intelligence to develop investigations that target TCO Networks and leadership command and control elements throughout Mexico.

Perhaps the most notable example of the high-level of cooperation between the U.S. and Mexico in 2016 was the prosecution of Sinaloa Cartel leader Joaquin Guzman Loera, known as "El Chapo." Such activity represents significant success for both the United States and Mexico in our shared struggle against TCOs. The United States and Mexico have established a strong and successful bilateral security partnership in the last decade and, to that end, DEA continues to work with our Mexican partners to provide any assistance, as requested, to build upon these successes.

CONCLUSION

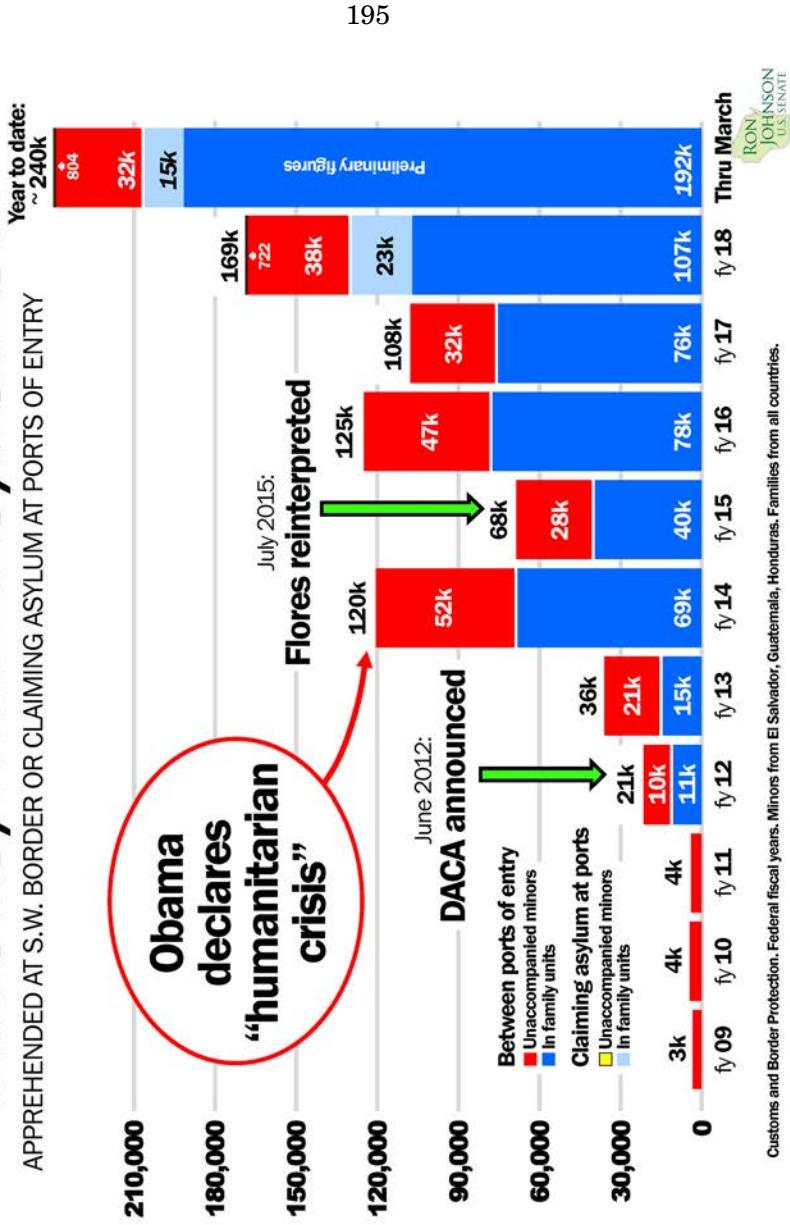
Mexican TCOs remain the greatest criminal drug threat to the United States. These Mexican poly-drug organizations traffic heroin, methamphetamine, cocaine, marijuana, and now more than ever illicit fentanyl and fentanyl-related substances, which are responsible for so many deaths over the last several years throughout the United States using established transportation routes and distribution networks. They control drug trafficking across the SWB and are moving to expand their share of U.S. illicit drug markets. Their influence up and down the supply chain, their ability to enter into new markets, and their associations with domestic gangs are of particular concern for DEA. DEA will continue to address this threat domestically and abroad by attacking the crime and violence perpetrated by the Mexican-based TCOs, which have brought tremendous harm to our communities. Targeting the world's most prolific and dangerous drug traffickers is a dynamic and evolving mission, and with it comes myriad challenges. But throughout our history, DEA has met those challenges and produced impressive results.

The fight against drug abuse is a generations-long struggle; it will not be completed overnight. DEA plays a critically important role in our country's holistic strategy of prevention, treatment and recovery support, and in reducing the availability of illicit drugs in the United States. DEA remains committed to bringing the "Most Wanted" drug traffickers and their entire networks to justice in cooperation with our law enforcement partners. By taking harmful drugs off of the street, dismantling major drug organizations, and seizing the profits associated with this trade, we are making our nation a safer place to live and do business.

We thank you for your consistent support. DEA looks forward to continuing to work with Congress to find solutions necessary to address the threats posed by TCOs and the harmful substances and illegal activity they are involved in, no matter where they may operate.

MINORS, FAMILIES, ASYLUM

APPREHENDED AT S.W. BORDER OR CLAIMING ASYLUM AT PORTS OF ENTRY



DETENTION BEDS REQUIRED

AT VARYING LEVELS OF APPREHENSIONS AND ADJUDICATION TIMES

	Average days for adjudication			
	45	30	20	10
200k	300,000	200,000	133,333	66,667
150k	225,000	150,000	100,000	50,000
100k	150,000	100,000	66,667	33,333
75k	112,500	75,000	50,000	25,000
50k	75,000	50,000	33,333	16,667
25k	37,500	25,000	16,667	8,333

Thousands of apprehensions per month



Committee staff



Asylum and Related Protections for Aliens Who Fear Gang and Domestic Violence

Hillel R. Smith
Legislative Attorney

January 15, 2019

Update: On December 19, 2018, following publication of this Sidebar, the federal district court for the District of Columbia ruled that several of the policies set forth in the Attorney General's decision in Matter of A-B- and U.S. Citizenship and Immigration Service's (USCIS) policy memorandum issued in light of that decision – including their general conclusion that claims based on gang or domestic violence fail to establish a credible fear of persecution – conflicted with provisions of the Immigration and Nationality Act (INA) and "impermissibly heightened" the standards for credible fear screenings. Accordingly, the court granted the plaintiffs' motion for a permanent injunction and enjoined USCIS from applying these policies with respect to credible fear determinations. The district court's decision and any forthcoming decision on appeal will be subject to further analysis as the case develops.

The original post from October 25, 2018, follows below.

Over the past year, non-U.S. nationals (aliens) from Central America (primarily Honduras, El Salvador, and Guatemala) have comprised an increasingly larger share of asylum applicants in the United States. And more recently, a “caravan” of thousands of individuals from Honduras has been traveling north across the Guatemala-Mexico border, with many reportedly seeking to escape widespread gang and domestic violence in Honduras. Previously, federal courts and immigration authorities have considered when such circumstances may raise a viable claim for asylum or other forms of relief from removal. In June 2018, Attorney General (AG) Jeff Sessions ruled in *Matter of A-B-* that aliens who fear gang or domestic violence in their home countries generally do not qualify for asylum based on those grounds—a ruling that is binding upon immigration authorities within both the Department of Justice (DOJ) and Department of Homeland Security (DHS). The decision may foreclose some claims of relief by asylum seekers, and subject more aliens apprehended along the border to expedited removal in lieu of the more formalized removal process available to aliens whose asylum claims are deemed sufficiently credible to warrant further review. This Legal Sidebar examines asylum claims based on gang and domestic violence,

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the AG's decision in *Matter of A-B-*, and recent guidance from DHS's U.S. Citizenship and Immigration Services (USCIS) in light of that ruling.

Asylum and Other Humanitarian-Based Forms of Relief from Removal

Federal immigration law provides that certain aliens who might otherwise be removed from the United States may be granted relief because they would likely face persecution in their country of origin. Asylum is one of the most consequential avenues of relief for an alien, potentially affording the recipient with a permanent foothold in the United States. To qualify for asylum, an applicant has the burden of proving past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The applicant must show that one of these protected grounds "was or will be at least one central reason for persecuting the applicant." In the absence of past persecution, an applicant can show a well-founded fear by presenting evidence of a reasonable possibility of future persecution. The applicant must also show persecution by the government or groups that the government is unable or unwilling to control; and, for purposes of showing a well-founded fear, that the applicant could not reasonably relocate within his country to avoid persecution. In addition, asylum is a discretionary form of relief; consequently, an alien who establishes eligibility for asylum may be denied relief as a matter of discretion.

The scope of the five enumerated grounds for which an alien may qualify for asylum has been the subject of dispute, and none more so than persecution based on membership in a "particular social group." Immigration authorities have described it as "perhaps the most complex and difficult to understand" ground for asylum. In 2014, the Board of Immigration Appeals (BIA), the highest administrative body responsible for interpreting and applying federal immigration laws, held that a particular social group must have three characteristics. First, the group must be composed of members who share a common immutable characteristic. The BIA has described a common immutable characteristic as one "that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." Second, the group must be defined with "particularity." The BIA observed that "particularity" refers to discrete and well-defined boundaries that provide a "clear benchmark for determining who falls within the group." Third, the group must be socially distinct within the society in question. Social distinction means that the group is perceived or recognized as a group by society, and "a social group cannot be defined exclusively by the fact that its members have been subjected to harm."

Apart from asylum, there are other forms of relief available for aliens who fear persecution or other types of mistreatment in their home countries. For instance, in some cases, an alien may be statutorily ineligible for asylum (e.g., because of specified criminal activity, firm resettlement in another country, or an untimely application). However, the alien typically can pursue withholding of removal, which carries a higher burden of proving that it is more likely than not the alien will be persecuted on account of one of the five protected grounds. In the alternative, the alien may apply for protection under the Convention Against Torture (CAT), which requires evidence that it is more likely than not that the alien will be tortured "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity"; the alien does not need to show that such torture would be predicated on one of the five enumerated grounds for which asylum or withholding of removal may be granted. Unlike asylum, withholding of removal and CAT protection are mandatory forms of relief. Therefore, an alien who is eligible for withholding or CAT protection cannot be removed to the country where he will be persecuted or tortured.

Claims Based on Gang and Domestic Violence

In recent years, the BIA and federal courts have increasingly addressed claims for relief by aliens who expressed a fear of gang or domestic violence. In the case of asylum and withholding of removal,

applicants frequently have argued that such violence constitutes persecution based on their membership in a particular social group. With regard to CAT claims, applicants have argued that such violence constitutes “torture” committed with the consent or acquiescence of the controlling government.

Gang Violence

In several published decisions, the BIA has rejected asylum claims based on gang violence, citing the lack of evidence showing that the alleged persecution was tied to one of the protected grounds. In these cases, the BIA rejected the applicants’ contentions that they were targeted as members of particular social groups, variously described by applicants as consisting of persons subject to gang recruitment or violence, persons with perceived gang affiliations, or persons who have repudiated gangs. The BIA concluded that these categorizations were too broad to fit within the particular social group framework. The federal courts of appeals have also generally held that aliens who fear gang violence do not qualify for asylum or withholding of removal, and have rejected particular social group claims that are broadly defined by the group members’ general resistance or vulnerability to gangs. Some courts have also cited government efforts to control gang violence as factors that undermine such claims. On the other hand, a few courts have held that aliens subject to gang violence were eligible for asylum because they established a nexus between the alleged harm and their membership in a cognizable particular social group, such as “witnesses who testify against gang members.” With respect to CAT protection, the absence of evidence showing the government’s consent or acquiescence to gang activity has often resulted in the denial of those claims.

Domestic Violence

In 1999, the BIA in *Matter of R-A-* considered whether aliens subject to domestic violence are eligible for asylum. In that case, the applicant claimed that she suffered severe physical and sexual abuse from her husband on account of her membership in a particular social group described as “Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination.” The BIA determined that the applicant failed to show that her proposed social group is “a group that is recognized and understood to be a societal faction, or is otherwise a recognized segment of the population” in Guatemala. In 2001, AG Janet Reno vacated the BIA’s decision pending final publication of proposed regulations that would have clarified the definitions of “persecution” and “membership in a particular social group,” but those regulations were never finalized.

More recently, in 2014, the BIA in *Matter of A-R-C-G-* held that “married women in Guatemala who are unable to leave their relationship” constitute a particular social group. The BIA determined that the group’s members “share the common immutable characteristic of gender,” and that “marital status can be an immutable characteristic where the individual is unable to leave the relationship.” The BIA also determined that the social group was sufficiently particular because the terms used to describe it (“married,” “women,” and “unable to leave the relationship”) “have commonly accepted definitions within Guatemalan society.” Further, the BIA concluded, the group “is also socially distinct” given evidence that Guatemala has a culture of “machismo and family violence.” Following *Matter of A-R-C-G-*, subsequent BIA decisions interpreted that ruling to mean that most Central American domestic violence victims fall within the definition of a particular social group.

Some federal courts of appeals, however, have upheld subsequent BIA decisions rejecting asylum and withholding claims based on domestic violence, which construed *Matter of A-R-C-G-* as applicable only to claims where the alien is forced to remain in the domestic relationship, and is thus in a “uniquely vulnerable” and “easily recognizable” social group. Reviewing courts have also rejected CAT claims based on domestic violence due to the lack of evidence in the considered cases that government authorities would consent or acquiesce to such violence.

The Attorney General's Decision in *Matter of A-B-*

Under DOJ regulations, the AG has the “unfettered” authority to direct the BIA to refer a case to him for review. In *Matter of A-B-*, AG Jeff Sessions reviewed a BIA decision that had reversed the denial of asylum to an applicant who alleged she suffered abuse from her husband in El Salvador. The AG exercised this authority in order to address whether being a victim of private criminal activity constitutes a particular social group for asylum and withholding of removal.

In a June 2018 opinion, the AG declared that “the asylum statute does not provide redress for all misfortune,” and ruled that the BIA in *Matter of A-R-C-G-* had erroneously “recognized an expansive new category of particular social groups based on private violence.” The AG determined that “[g]enerally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum,” or meet the “credible fear” standard to warrant consideration of an asylum application.

The AG stated that “[t]o be cognizable, a particular social group must ‘exist independently’ of the harm asserted,” or otherwise “the definition of the group moots the need to establish actual persecution.” The AG determined that “married women in Guatemala who are unable to leave their relationship,” the social group at issue in *Matter of A-R-C-G-*, failed to meet this standard because the inability to leave is essentially created by the alleged harm. The AG also disagreed with the BIA’s conclusion that this social group was sufficiently discrete, stating that “[s]ocial groups defined by their vulnerability to private criminal activity likely lack the particularity required . . . given that broad swaths of society may be susceptible to victimization.” Further, observing that “the key thread running through the particular social group framework is that social groups must be classes recognizable by society at large,” the AG questioned whether Guatemalan society views domestic violence victims as “a distinct group in society, rather than each as a victim of a particular abuser in highly individualized circumstances.” In short, the AG concluded that a particular social group ground must be construed in a manner that is not “too broad to have definable boundaries and too narrow to have larger significance in society.”

The AG, moreover, determined that private criminal actors often target people for personal or economic reasons that are unrelated to any particular social group, and that an applicant’s ability to relocate within a country “would seem more reasonable” when the alleged harm is “at the hands of only a few specific individuals.” The AG also ruled that an applicant alleging harm by private actors “must show more than the government’s difficulty controlling the private behavior.” Instead, the applicant “must show that the government condoned the private action ‘or at least demonstrated a complete helplessness to protect the victims.’”

Finally, the AG observed that “an applicant bears the burden of proving not only statutory eligibility for asylum but that she also merits asylum as a matter of discretion.” The AG determined that asylum adjudicators should thus consider “relevant discretionary factors,” even where the applicant otherwise demonstrates asylum eligibility, such as the alien’s ability to apply for asylum in other countries, and the length of time spent in a third country before coming to the United States.

USCIS’s Guidance for Adjudicating Credible Fear and Asylum Claims

In July 2018, USCIS issued guidance for determining whether a person is eligible for asylum in light of *Matter of A-B-*. The USCIS guidance instructs asylum officers to make “at least five basic inquiries” when an applicant raises a claim based on membership in a particular social group:

1. Whether the applicant is a member of “a clearly-defined particular social group, which is composed of members who share a common immutable characteristic, is defined with particularity, is socially distinct within the society in question, and is not defined by the persecution on which the claim is based”;

2. Whether the applicant has shown that his or her membership in the group is a central reason for the alleged persecution;
3. If the persecutor is not affiliated with the government, whether the applicant can show that the government is unable or unwilling to protect him or her;
4. Whether internal relocation is possible, would protect the applicant from the persecution, and presents a reasonable alternative to asylum; and
5. Whether the applicant merits relief as a matter of discretion.

The guidance also [instructs](#) asylum officers to apply these standards when evaluating whether an alien who might otherwise be subject to expedited removal has a credible fear of persecution that warrants further consideration of the alien's claim of relief. The USCIS guidance [concludes that](#) most particular social group claims defined by the members' vulnerability to gang or domestic violence by non-government actors would *not* warrant asylum or meet the [threshold](#) necessary to satisfy the credible fear assessment. Further, the USCIS guidance instructs asylum officers to consider the applicant's [credibility](#), which alone may warrant the denial of asylum or a negative credible fear finding.

Impact of *Matter of A-B-* and Legislative Options

The AG's ruling in [*Matter of A-B-*](#) restricts the availability of asylum for aliens who claim to be victims of gang or domestic violence in their home countries. This limitation may be most significant at the U.S.-Mexico border, where there has been an influx of aliens arriving from Central America and seeking asylum, withholding of removal, or CAT protection based on fears of gang or domestic violence. Before the AG's ruling, such aliens claiming persecution on those grounds [could potentially have had](#) their claims reviewed administratively, rather than being summarily removed from the United States via the expedited removal process. But the AG's decision clarifies that aliens who fear private criminal activity, such as gang and domestic violence, generally do not qualify for asylum, or [meet the credible fear threshold](#) to warrant formal adjudication of their claims. The USCIS [guidance](#) issued in the wake of that ruling reinforces that conclusion.

Despite these restrictions, aliens fearing gang or domestic violence may still qualify for asylum or withholding of removal if there is evidence that their alleged persecutors are centrally motivated by a protected ground, such as political opinion, religion, or membership in a particular social group that is not simply defined by the members' vulnerability to crime. For example, some courts have held that a particular social group may include [witnesses who testified against gang members, family members of such witnesses, and, in some cases, former gang members](#). Additionally, there may be [limited circumstances](#) where the alien could establish [eligibility for CAT protection](#), which requires no nexus to a protected ground. The AG's ruling does not necessarily conflict with the general holdings of these cases.

Yet [some have argued](#) that *Matter of A-B-*'s strict interpretation of asylum law deprives domestic violence and gang victims of the opportunity to seek asylum and related protections, particularly at the credible fear screening stage, where they may not have the resources to fully present their claims. While there is no current official data regarding the impact of the AG's decision, there has [reportedly been an increase](#) in negative credible fear determinations by immigration authorities. Additionally, [statistical data](#) shows a sharp decline in immigration judge decisions finding a credible fear since the end of 2017, but that decline started months before the AG's decision.

In any event, by [regulation](#) the AG's decision is binding on all federal immigration authorities. In August 2018, a [federal lawsuit](#) was brought challenging USCIS's guidance implementing the AG's ruling on the grounds that the agency's new policies would essentially preclude any consideration of asylum claims predicated on a fear of gang or domestic violence regardless of the underlying merits of each case. A final decision has yet to be rendered by the district court.

While federal courts may ultimately determine the legality of the AG's decision and ensuing USCIS guidance, Congress has the power to clarify the scope of asylum protections for aliens fleeing gang and domestic violence. For example, Congress could clarify the meaning of a "particular social group," or expand or narrow the enumerated grounds for asylum to plainly cover or exclude victims of gang or domestic violence. In the alternative, Congress could create a separate form of discretionary relief for certain aliens fleeing gang or domestic violence. Additionally, Congress, through its spending power, could limit or prohibit the use of funds to implement any policy changes made pursuant to the AG's decision, as a recent appropriations bill would have done. Finally, given some observers' concerns about the AG's power to certify immigration cases for review, some legislators have proposed legislation to create a separate independent tribunal to review immigration cases.

OFFICE OF REFUGEE RESETTLEMENT

An Office of the Administration for Children & Families

Facts and Data

General Statistics

Data provided by fiscal year (October 1 – September 30)

[Age](#) | [Country of Origin](#) | [Gender](#) | [Home Studies and Post-Release Services](#) | [Length of Care](#) | [Referrals](#) | [Release to Sponsors](#)

Age

Age breakdown of unaccompanied alien children by fiscal year (October 1 – September 30)

AGE	FY2018	FY2017	FY2016	FY2015	FY2014	FY2013	FY2012
0-12	15%	17%	18%	17%	21%	14%	11%
13-14	12%	13%	14%	14%	16%	13%	11%
15-16	37%	37%	37%	38%	36%	40%	39%
17	35%	32%	31%	30%	27%	34%	38%

Country of Origin

The top three countries of origin shifted from FY2017, with the highest percentage of children in FY2018 coming from Guatemala, followed by Honduras and El Salvador.

COUNTRY OF ORIGIN	FY2018	FY2017	FY2016	FY2015	FY2014	FY2013	FY2012
HONDURAS	26%	23%	21%	17%	34%	30%	27%
GUATEMALA	54%	45%	40%	45%	32%	37%	34%
EL SALVADOR	12%	27%	34%	29%	29%	26%	27%
MEXICO	3%	<3%	3%	6%	<2%	3%	8%
ALL OTHER COUNTRIES	<5%	3%	2%	3%	<3%	5%	4%

Gender

The demographic breakdown in FY18 changed slightly from FY17 to reflect a small increase in male UAC arrivals and decrease in female UAC arrivals.

YEAR	MALES	FEMALES
FY2018	71%	29%
FY2017	68%	32%
FY2016	67%	33%
FY2015	68%	32%
FY2014	66%	34%
FY2013	73%	27%
FY2012	77%	23%

Home Studies and Post-Release Services

Number of home studies conducted by ORR and number of unaccompanied alien children served by post-release services (PRS).

YEAR	HOME STUDIES	UAC SERVED BY PRS
FY2018	3,641	14,088

204

Facts and Data Office of Refugee Resettlement ACF		
YEAR	HOME STUDIES	UAC SERVED BY PRS
FY2017	3,173	13,381
FY2016	3,540	10,546
FY2015	1,895	8,618

Length of Care

Average length of time a UAC remained in ORR care* in FY2018 was 80 days.

Referrals

This reflects the number of referrals ORR receives from the Department of Homeland Security each fiscal year. Read more about referrals to ORR and initial placement (<https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.3>).

YEAR	REFERRALS
FY2018	46,100
FY2017	40,810
FY2016	59,170
FY2015	33,726
FY2014	57,496
FY2013	24,668
FY2012	13,525

Release to Sponsors

View the number of unaccompanied alien children released to sponsors by state (<https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state>) and by county (<https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-county>)

View ORR Fact Sheet on Unaccompanied Alien Children's Services (https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_alien_children_program_fact_sheet_december_2018.pdf)

Listen https://app.readspeaker.com/cgi-bin/rsent?customerid=7596&lang=en_us&readid=main&url=https%3A%2F%2Fwww.acf.hhs.gov%2Forr%2Fabout%2Fucs%2Ffacts-and-data

Last Reviewed: February 13, 2019

Sponsor Immigration Status (July 2018-January 2019)

Legal Status	# of Sponsors
Asylum:Appealed to federal court	45
Asylum: Immigration Judge Final Order w/ 30 day appeal period waived or completed	6
Asylum: Immigration Judge Initial Order w/ 30 day appeal period	52
Asylum: USCIS grant	117
B-1/2 Tourist/business visa (non-immigrant status)	13
Continued Presence	31
F-1 student visa (non-immigrant status)	2
Final Order of Removal	21
Humanitarian Parole	4
LPR derivative (of US relative)	91
LPR other	850
NTA (in removal proceedings)	638
Other	1006
Other non-immigrant visa	32
SIJS: I-360 approved	22
SIJS: I-485 approved	41
Temporary Protected Status	958
T-nonimmigrant status	6
U-nonimmigrant status	33
US Citizen	1008
Withholding of Removal	9
Without status	18459
Blank	1
Total	23445



Written Statement of

Krish O'Mara Vignarajah

President and CEO

Lutheran Immigration and Refugee Service

For a Hearing of the Senate Homeland Security & Governmental Affairs Committee:

"Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline"

Tuesday, April 9, 2019

Senate Dirksen Building SD-342

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LIRS (Lutheran Immigration and Refugee Service) appreciates the Homeland Security & Governmental Affairs Committee for having a hearing on “Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline,” and for the opportunity to submit this Statement for the Record.

LIRS has worked with unaccompanied refugee and immigrant children in the United States for nearly forty years, and with the Office of Refugee Resettlement (ORR) since they first were assigned custody of unaccompanied children in 2003. LIRS was one of two organizations contacted by the federal government to provide family reunification services throughout the recent child separation crisis brought about due to the administration’s “zero tolerance” policy (ZTP). We responded to the challenge¹. Without financial assistance from the federal government, LIRS raised funds, mobilized our network of partners, and came to the aid of separated families². Specifically, LIRS provided tired and traumatized families clothing, food, shelter, medical and psychological care, and with the support of FWD.org, we helped families secure travel arrangements to their final destinations in the United States.

Given that children are still separated, our family reunification work is far from over, and these efforts have been compounded by the ongoing and newly problematic border policies. Located in Phoenix, Arizona, our partner, Lutheran Social Services-Southwest (LSSSW) is one of many faith-based organizations and non-governmental organizations (NGO's) that are on frontline, serving vulnerable children and families who have fled violence and instability in the Northern Triangle. LIRS understands that building stronger public-private working relationships is part of the solution to this current humanitarian crisis, not denying vulnerable children and their families their right to seek asylum. LIRS and our partners on the ground remain committed to receiving and ensuring that the trauma inflicted migrants are welcomed with food, clothing, shelter, and can complete onward travel so that they can be reunited with their families in the United States.

¹ LIRS's sister organization, United Conference of Catholic Bishops (USCCB) was also instrumental in the family reunification efforts in California. LIRS assisted in Albuquerque, New Mexico and Phoenix, Arizona. Please see attached report: The United States council of Catholic Bishops/Migration and Refugee Service and Lutheran Immigration and Refugee Service. 2018. ‘Serving Separated and Reunited Families: Lessons Learned and the Way Forward to Promote Family Unity. Also available online at:

https://www.lirs.org/wp-content/uploads/2018/10/Serving-Separated-and-Reunited-Families_Final-Report-10.16.18-updated.pdf.

² Id.

LIRS submits this statement for the record to share our first-hand experiences and highlight our concerns with respect to the administration's immigration policies and procedures. We put forth the argument that safeguarding our border or protecting vulnerable children is not a binary choice. Importantly, we offer recommendations for maintaining child welfare protections for children from the time they are apprehended at the southern border until the conclusion of their immigration proceedings.

The Administration's Policies and Practices Fuel the Southern Border Humanitarian Crisis

Zero tolerance policy (ZTP), 'metering' asylum seekers at the border, the 'Migrant Protection Protocols', attempts at limiting the rights of asylum seekers to apply for asylum except at ports of entry, are a few examples of the inhumane, ill-conceived and misguided policy decisions made by the administration that have directly exasperated the unprecedented humanitarian crisis at our southern border today. Unlike the administration, that espouses the view that our asylum laws are merely loopholes in the overall immigration law, along with other immigration experts, LIRS believe that the administration's approach is grossly misguided and urges the administration to realign its policy approach from the perspective of contemporary realities and abide by our laws.

Instead of acknowledging that migration demographics have changed, as have the reasons for migration, the administration continues to approach its immigration policies from an outdated perspective. In the past, most migrants crossing the southern border were single Mexican men who were seeking better economic opportunities in the U.S.³. Under these circumstances, a deterrence approach worked to drive down migration. In contrast, today the majority of migrants at our southern border are women, children and families who have fled gang and domestic violence, corruption, and poverty. The migrants seeking asylum on our southern border are fleeing to save their lives. Hardline immigration policies lack the deterrence impact the administration aims to achieve, but they most definitely are fueling the chaos at the border and to a migrant's traumatic experiences. The humanitarian crisis at the border is complex and requires complex solutions-this lesson should have been learned from the cruel and failed ZTP.

³ Ana Gonzalez-Barrera., November 15, 2015, "More Mexicans Leaving than coming to the U.S.," Pew Research Center, (Available at: <https://www.pewhispanic.org/2015/11/19/more-mexicans-leaving-than-coming-to-the-u-s/>).

The Fallacy of Family Separation

"Don't come to the United States" was the underlying message to families and children of the Zero Tolerance Policy (ZTP). Documented through testimonies by federal government officials before the House and Senate Homeland Security and Judiciary Committees, government reports and leaked documents. This policy was perceived by the Administration to be a rational means of enforcing our immigration laws and for immigration deterrence. This is unacceptable. What's more, the government continues to deny that it had a policy to separate families and having prior knowledge that the ZTP would inflict life-long mental and physical trauma onto separated children⁴.

Inexplicably, family separation has been justified by the administration on the basis of two falsehoods; first, that our immigration laws and system are purposefully being exploited by children and families, and that in order to stem the flow of migrants from Guatemala, Honduras and El Salvador (collectively referred to as the Northern Triangle) separating families would serve as a deterrent.

Contrary to the government's repeated claim that children and families arriving on our southern border are exploiting loopholes in our immigration laws -seeking asylum *is legal*, at a port of entry or between ports of entry⁵. Moreover, LIRS is alarmed to hear government officials speak about laws that take into account child welfare standards as loopholes. This attitude undermines our nation's values and, more importantly, our position as a global leader in human rights.

The second falsehood; that family separation would serve as a deterrent to migration demonstrates the ignorance and cruelty that went into planning and implementation of the ZTP. There is an abundance of open source information that documents and explains the lives of innocent civilians from the Northern Triangle who are at risk and suffering from an exponential increase in gang violence and territorial control, corruption, and extortion⁶. Women are distinctly impacted by high rates of domestic abuse and violence and are exceptionally

⁴ Zolan Kanno-Youngs and Michael D. Shear, 'Homeland Security Chief spars with Democrats Over Splitting Migrant Families,' *New York Times*, March 6, 2019.

⁵ 8 USC §1158 (a)(1) "Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum."

⁶ Rocio Cara Labrador and Danielle Renwick, June 26, 2018, 'Central America's Violent Northern Triangle,' *Council on Foreign Relations* (Available at: <https://www.cfr.org/backgrounder/central-americas-violent-northern-triangle>), Maureen Meyer and Elyssa Pachico, February 1, 2018, 'Fact Sheet: U.S. Immigration and Central American Asylum Seekers,' *Washington Office on Latin America*,

vulnerable because of the inherent lack of will by police and their governments to prosecute and protect women from violence⁷.

Thus, the main driver of families fleeing the Northern Triangle is not because they believe they can exploit loopholes in the American immigration system. Rather, higher rates of children, women and families migrating to the United States from the Northern Triangle region is based on the credible fear that families have for their individual safety and/or the safety of their family unit. As such, many children and families who arrive on our southern border have had to make life-death decisions and sacrifice their homeland to make the treacherous journey to our southern border.

Migrant Protection Protocol or Remain in Mexico

LIRS is deeply concerned with the recent announcement from the former DHS Secretary Kirstjen Nielsen that the 'Remain in Mexico' policy will be expanded across the southern border⁸. Nearly four months old, the benefits of the Remain in Mexico policy have yet to be seen. In fact, immigration experts report that the policy has exacerbated chaos and placed the lives of children and families in danger. Camila DeChalus in *Rollcall* reports:

"Problems with lawyers not having access to their clients, migrants not automatically being given credible fear interviews, lack of housing in migrant facilities in Tijuana, and confusion on who is and is not eligible for the MPP program are just some of the problems many immigration lawyers have encountered in the past few months⁹."

(Available at: <https://www.wola.org/analysis/fact-sheet-united-states-immigration-central-american-asylum-seekers/>), Tyler Takemoto, January 22, 2019, 'Understanding the Causes of Migration from Central America,' Pacific Council on International Policy, (Available at: <https://www.pacificcouncil.org/newsroom/understanding-causes-migration-central-america>)

⁷ Maria Fernanda Perez Arguello and Bryce Couch, November 8, 2018, 'Violence Against Women Driving Migration from the Northern Triangle,' Atlantic Council, (Available at: <https://www.atlanticcouncil.org/blogs/new-atlanticist/violence-against-women-driving-migration-from-the-northern-triangle>), Jeffrey Hallock, Ariel G. Ruiz Soto, and Michael Fix, May 30, 2018, 'In Search of Safety, Growing Numbers of Women Flee Central America,' Migration Policy Institute, (Available at: <https://www.migrationpolicy.org/article/search-safety-growing-numbers-women-flee-central-america>)

⁸ Department of Homeland Security, April 1, 2019, "Secretary Nielsen Orders CBP to Surge More Personnel to Southern Border, Increase Number of Aliens Returned to Mexico," DHS Press Release, (Available at: <https://www.dhs.gov/news/2019/04/01/secretary-nielsen-orders-cbp-surge-more-personnel-southern-border-increase-number>)

⁹ Camila DeChalus, April 5, 2019, "'Remain in Mexico' policy for migrants creating ambiguity, fear," Roll Call, (Available at: https://www.rollcall.com/news/congress/remain-mexico-policy-migrants-creating-ambiguity-fear?utm_source=morningheadlines&utm_medium=email&utm_campaign=newsletters&utm_content=04/05/2019).

Like ‘zero tolerance’ and border policies that the Administration has recently implemented, the Remain in Mexico policy lacks a clear vision and robust procedures for ensuring that migrants receive their fair day in court. Simply holding children and families in Mexico is not a common sense, human, or legally sound approach to addressing the influx of migrants.

Safeguarding the Southern Border and Protecting Children is not a Binary Choice

The immigration challenges that we are currently facing will not be resolved by building a wall, closing the border, separating families, putting kids in cages, or denying asylees their lawful right to pursue asylum at ports of entry. Paramount today is the the importance of protecting children’s rights, our refugee and immigration laws, and addressing the root causes of immigration. LIRS is particularly concerned with the administration’s view that safeguarding children’s lawful rights is binary choice when it comes to border policies and practices. This is incorrect. As a nation of laws and values, the United States has the resources and tools to simultaneously protect children and enforce immigration laws.

LIRS opposes the DHS’s announcement that it will take steps to alter the Trafficking and Victims Reauthorization Act (2008) (TVPRA) and revoke the Flores Settlement Agreement (FSA) in order to allow the administration to detain children and families for indefinite periods of time¹⁰. The administration frequently puts forward the argument that loopholes in TVPRA (2008) and FSA that are being exploited by smugglers and cartels. LIRS disagrees. Children nor the laws that protect them are loopholes.

The FSA, for instance, came to fruition because in the late 1980’s the then-Immigration Nationality Service detained a little 15-year old girl who fled the Civil War in El Salvador, Jenny Lisette Flores with adults. Jenny was frequently stripped searched, denied education, and locked up with non-relative adults¹¹. After a long court battle, Congress intervened, recognizing that detaining children is the wrong thing to do and established the FSA to ensure that no other child would lose their rights and dignity while in detention. Backsliding child

¹⁰ Secretary Nielsen letter to Members of Congress. March 28, 2019. (Available at: <https://www.documentcloud.org/documents/5783204-Secretary-Nielsen-Letter-to-Members-of-Congress.html>); and Ted Hesson, April 2, 2019, “Nielsen pushing lawmakers to make it easier to deport asylum-seekers,” *Politico*. (Available at: <https://www.politico.com/story/2019/04/02/kirstjen-nielsen-congress-immigration-1312238>).

¹¹ NBC News, July 24, 2014. “When Migrant Children Were Detained Among Adults, Stripped Searched,” NBC News. (Available at: <https://www.nbcnews.com/storyline/immigration-border-crisis/when-migrant-children-were-detained-among-adults-strip-searched-n161956>)

protections is not the answer. Nor is disregarding the fact that family separations and detaining children and families is extremely damaging to the mental and physical well-being of children.

Keeping Children Safe is a Legal and Moral Obligation

Like many, LIRS was deeply concerned by the administration's practice of tearing apart families, detaining children, using deceptive practices, and blatant disregard for child welfare laws and standards. We believe, and have stated for years, that the safest and best place for children is with their families and not in detention.

There is widespread consensus from medical experts that detention is detrimental to the overall health and wellbeing of children and carries numerous short and long-term health risks. Researchers, for instance, have found that the impacts of trauma children have endured in their home countries is compounded by family separation and that children could suffer from toxic stress which can have a lifelong impact. PBS explains that:

"Children being separated from their parents at the border experience toxic stress — intense, repetitive or prolonged adversity without an adult's intervention — a situation that's usually seen when a child is placed in an orphanage, survives a natural disaster or lives in poverty, a war zone or a refugee camp¹²."

Administration officials have also voiced opposition to ZTP. Commander Jonathan White, a career public health official at the Department of Health and Human Services, for instance, raised concerns back in 2017 about the impact of ZTP on children, but they went unheeded. Additionally, the government's own medical doctors, Drs. Scott Allen and Pamela McPherson, have voiced their concerns on the physical and psychological harms of separating children from their parents and placing them into detention¹³.

The administration claims that it is difficult to manage the influx of unaccompanied children and children and their families until they close the loopholes in the TVPRA (2008) and FSA. They maintain that one of the

¹² Laura Santhanam, June 18, 2018, 'How the toxic stress of family separation can harm a child,' PBS. (Available at: <https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child>), Laura CN Wood, 2018, 'Impact of punitive immigration policies, parent-child separation and child detention on the mental health and development of children', *BMJ Pediatrics Open*, 2(1). (Available at: <https://bmjpaedopen.bmjjournals.org/content/bmjpo/2/1/e000338.full.pdf>)

¹³ Miriam Jordan, July 2018 "Whistle-Blowers Say Detaining Migrant Families Poses High Risk of Harm" *The New York Times*, (Available at: <https://www.nytimes.com/2018/07/18/us/migrant-children-family-detention-doctors.html>).

reasons why unaccompanied kids and families come to the U.S. is to exploit the loopholes in these laws that limit the amount of time the government can detain children, LIRS firmly disagrees. First, the administration frequently disregards the laws it says it is constrained by. LIRS is aware of kids in our care who have been detained by DHS for over 20 days. Secondly, there are viable alternatives to detention that could be used to manage the influx of migrants.

Family Case Management is in the best interests of the child

We contend that our existing laws are correctly placing children in the least restrictive setting is in the best interest of the child and a more appropriate and cost effective approach for the government. Family detention is *neither the cheaper alternative nor is it the best scenario for a family*. Having children in detention, even with their families, poses a threat to their health and mental well-being and exposes them to mental, physical and sexual abuse. Best practice standards include home-like settings, such as, community based foster care or group care where there are no more than 20-25 children and youth at one location.

Alternatives to detention (ATD), such as the Family Case Management Program (FCMP) have proven to be successful, more child-friendly and a cost-effective alternative to detention. FCMP offers a community-based approach to detention whereby case managers help migrants understand their immigration obligations and ensure that they attend check-ins with ICE and court hearings.

Since the 1990's LIRS has first-hand experience providing community based alternative to detention programs, such as, FCMP¹⁴. From 2013-2015, LIRS operated ATD pilot programs in partnership with ICE in Chicago, Illinois and San Antonio, Texas. Following these pilots, ICE expanded its "traditional forms of release (such as parole, bond, or order of supervision), to include case management in the Family Case Management pilot program¹⁵." The FCMP pilot was launched 2015 and, despite its successes, the program was canceled by the administration in June 2017. The Department of Homeland Security Office of Inspector General reports that 99% of individuals who participated in the FCMP attended their check in appointments with ICE and 100% attended their court hearings. Significantly lower costs is another benefit of FCMP since detaining families, costs the government \$320 per day, while the FCMP only costs \$38 per day¹⁶.

¹⁴ *Supra* note 1.

¹⁵ *Id.* at 14.

¹⁶ Women's Refugee Commission, November 2018, 'Backgrounder: Family Case Management Program,' (Available at: <https://www.womensrefugeecommission.org/images/zdocs/Backgrounder-FCMP.pdf>).

Alternatives to detention (ATD) are not only more beneficial to tax payers and the justice system, but keeping children in a community environment as opposed to detention is safer. There have been many news reports that highlight the inhumane conditions at detention facilities and instances of mental, physical and sexual abuse of children in government custody. Specifically, the government is currently facing lawsuits by former immigrant family and children detainees that allege that the government did not provide clean water, food, and adequate medical care to children and adults in detention¹⁷.

LIRS Calls for the Following Common Sense, Legal and Humane Solutions for the Humanitarian Crisis at the Border:

Instead of going in the wrong direction of declaring a national emergency to build a wall and searching for ways to disobey our asylum laws and dismantle children's rights, the administration should dedicate more attention to reuniting families that it is responsible for separating and finding common sense, humane, and legal solutions for the contemporary problems at our border. In practical terms;

- (1) **LIRS opposes a 2-year plan, and demands the government to reunite all the families it separated, as soon as possible.** According to the HHS-OIG, in addition to the 2,700 children the government admits to separating, thousands more children may have been separated under the ZTP¹⁸. The government has already indicated that it is reluctant to take necessary steps to ensure that all children and families are reunited¹⁹. And recently, the government announced that it will take 2-years to reunify families it has separated²⁰. We cannot allow the administration to forego its responsibilities to reunite all families as soon as possible, the government owes this to the families they separated and to the American public.

¹⁷ Lucas R. v. Alex Azar (2:18-cv-05741) District Court, C.D. California. Also see, Alexandra Hutzler, 'Five Immigrant Children sue Trump administration over 'jail-like' detention conditions,' *Newsweek*, June 30, 2018. (Available online at: <https://www.newsweek.com/immigrant-children-sue-trump-cruel-detention-conditions-1002920>). Priscilla Alvarez, January 22, 2019, 'Groups sue on behalf of more than 10,000 detained undocumented children. *CNN: Politics* (Available at: <https://www.cnn.com/2019/01/22/politics/class-action-child-detention/index.html>).

¹⁸ *Supra* note 12.

¹⁹ Jacob Scoboroff, and Dennis Romero, February 2, 2019, 'Finding all migrant children separated from parents may be impossible, feds say,' *NBC News*. (Available at: <https://www.nbcnews.com/news/us-news/finding-all-migrant-children-separated-their-families-may-be-impossible-n966266>)

²⁰ Catherine E. Shoichet and Priscilla Alvarez, April 6, 2019. "It may take 2 years to identify thousands of separated families, government says," *CNN Politics*, (Available at: <https://www.cnn.com/2019/04/06/politics/family-separations-plan/index.html>).

- (2) LIRS believes that the government must remain committed to the ‘best interests of the child’ principles in full accordance to the Flores Settlement Agreement (FSA).** Last Fall, the Department of Homeland Security (DHS) and the Health and Human Services (HHS) issued a Notice of Proposed Rulemaking that, if adopted, the proposed regulations would not only permit families to be detained, but also would allow for the indefinite detention of children²¹. LIRS recommends that Congress continue to defend the FSA and take action by codifying into law the child welfare protections contained in the FSA.
- (3) Separating children from their families should never again be used for the purpose of immigration deterrence.** LIRS recognizes that under the best interests of the child there are exigent situations that require CBP to separate children from their families, in cases of possible human trafficking or child abuse. Family separation should never be employed as an immigration deterrence policy. It is cruel, inhumane, inflicts lifelong mental and physical trauma on vulnerable children, and is costly.
- (4) DHS must immediately hire child welfare experts to assist in making family separation decisions.** Trained child welfare staff should be engaged in making family separation determinations. This will help to ensure that procedures are trauma informed and child focused. CPB and ICE agents are experts in law enforcement not child welfare. Therefore, they are not equipped to provide the type of forensic interview with children that is warranted before making a determination to separate a caregiver from a child.
- (5) Increasing detention beds is not an appropriate response to the humanitarian crisis at the border, instead, the government should use its limited resources to fund alternatives to detention, like, Family Case Management.**

Congress has approved \$30.5 million dollars in the FY2019 budget for family case management. LIRS believes that non-profit community-based organizations, not for-profit correction’s institutions are better placed and better equipped to run FCMP. Community based organizations can offer children and their families trauma informed care and services. Providing services through a trauma informed lens has proven to work as reflected by the high rates of immigration compliance from migrants who participate in FCMP.

²¹ “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children”, 83 Fed. Reg. 45484 (September 7, 2018).

- (6) In order to resolve the humanitarian crisis at our border LIRS calls on the administration to end all policies and practices that obstruct migrants from pursuing their legal right to seek asylum and rescind the MPP.

TESTIMONY OF ANTHONY M. REARDON
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

UNPRECEDENTED MIGRATION AT THE U.S. SOUTHERN BORDER:
PERSPECTIVES FROM THE FRONTLINE

BEFORE THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

April 9, 2019

Chairman Johnson, Ranking Member Peters, and distinguished members of the Committee, thank you for the opportunity to submit testimony for this hearing. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 27,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists and trade enforcement personnel stationed at 328 land, sea and air ports of entry across the United States (U.S.) and 16 Preclearance stations currently in Ireland, the Caribbean, Canada and United Arab Emirates airports. CBP's Office of Field Operations (OFO) pursues a dual mission of safeguarding American ports, by protecting the public from dangerous people and materials, while enhancing the nation's global and economic competitiveness by enabling legitimate trade and travel. CBP OFO employees are responsible for border security, including anti-terrorism, immigration, anti-smuggling, trade compliance, and agriculture protection at U.S. ports of entry.

In addition to CBP's trade and travel security, processing and facilitation mission, CBP OFO employees at the ports of entry are the second largest source of revenue collection for the U.S. government. In 2018, CBP processed more than \$2.8 trillion in imports and collected approximately \$44 billion in duties, taxes, and other fees.

According to CBP onboard staffing data, there is a shortage of approximately 3,700 CBP Officers at the ports of entry. Yet the Administration has not included sufficient funding in its FY 2020 budget request to address this vast CBP Officer staffing gap.

For these reasons, NTEU strongly supports S. 1004, the *Safeguarding American Ports Act*, a bipartisan bill introduced by Ranking Member Peters and Senate Finance Trade Subcommittee Chairman John Cornyn. S. 1004 authorizes the hiring of 600 CBP Officers and requisite support staff to each year until the staffing gap in CBP's Workload Staffing Model (WSM) is met.

I would be remiss if I did not commend NTEU's frontline CBP employees along with 800,000 federal employees that were required to work without pay for 35 days this winter during the partial government shutdown. Furthermore, some who worked unpaid were required to make prompt payments on official government purchases made on their government-issued credit cards while the federal government was shut down and unable to reimburse them. This 35-day shutdown was hard on all employees, but especially so for those with the least means, who could

not float government purchases or live on savings while they went without their paychecks. This was an unconscionable way to treat the dedicated employees who serve the American people.

NTEU appreciates that Congress agreed on a FY 2019 funding bill that not only granted all federal employees a pay raise, but also funded 600 new CBP Officer hires that are desperately needed.

Having met with thousands of CBP Officers at the ports of entry, I can tell you that the number one CBP frontline workforce challenge from the CBP OFO employee perspective is the critical staffing shortage at the ports of entry, and this staffing shortage is staggering. Understaffed ports lead to long delays in travel and cargo lanes and also create significant hardship and safety issues for frontline employees. Involuntary overtime and involuntary work assignments far from home disrupts CBP Officers' family life and destroys morale.

The more than 27,000 CBP employees represented by NTEU are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs, and our economy safe from illegal trade, while ensuring that legal trade and travelers move expeditiously through our air, sea and land ports. But with a total CBP Officer staffing shortage of 3,700 and a shortage of over 700 Agriculture Specialists, frontline CBP employees at our nation's ports of entry need relief.

The economic cost of the CBP OFO staffing shortage is also staggering. CBP employees at the ports of entry are not only the first line of defense for illegal trade and travel enforcement, but their role of facilitating legal trade and travel is a significant economic driver for private sector jobs and economic growth. According to CBP, for every 1,000 CBP officers hired there is an increase in the Gross Domestic Product (GDP) of \$2 billion; \$642 million in opportunity costs are saved (the amount of time that a traveler could be using for purposes other than waiting in line, such as working or enjoying leisure activities); and 33,148 annual jobs are added. **If CBP filled the 3,700 needed new positions, the impact could be as high as a \$7.4 billion increase in GDP; a \$2.38 billion savings in opportunity costs; and the creation of 122,650 new private sector jobs.**

In addition, according to the Joint Economic Committee (JEC), the volume of commerce crossing our borders has more than tripled in the past 25 years. Long wait times lead to delays and travel time uncertainty, which can increase supply chain and transportation costs. According to the Department of Commerce, border delays result in losses to output, wages, jobs and tax revenue due to decreases in spending by companies, suppliers and consumers. JEC research finds border delays cost the U.S. economy between \$90 million and \$5.8 billion each year.

Noting the positive impact of hiring additional CBP Officers, it is troubling that the President's 2017 Border Security Executive Order and his subsequent budget requests did not ask for one additional CBP officer new hire. In 2017, CBP Officers at the ports of entry recorded over 216,370 apprehensions and seized over 444,000 pounds of illegal drugs, and over \$96 million in illicit currency, while processing over 390 million travelers and \$2.2 trillion in imports through the ports. Imagine what they could do with adequate staffing and resources.

The risk of successful incursions through the ports of entry by terrorists, smugglers and other criminals increase when ports are under constant pressure to limit wait times while working short staffed. As port traffic increases, it will become more difficult for CBP Officers and Agriculture Specialists to stop bad actors and bad things from coming through the ports without significantly increasing wait times, which will harm legal international trade and travel.

CBP Officer Staffing Challenges

NTEU members at the Southwest border ports have told me of the ongoing challenges of managing the changing demographic flows from adult males traveling alone, to family units with small children. The limited capacity at the ports to process asylum seekers puts additional stress on CBP personnel and on the migrant families who are precluded from lawfully presenting themselves at ports and requesting asylum protection.

Because the surge of migrants seeking asylum are diverted around the ports, Border Patrol Agents have become overwhelmed and CBP has begun “Operation Southern Support” and will redeploy up to 750 CBP Officers from ports of entry “to help manage overcrowding in Border Patrol facilities, protect the health and safety of in-custody aliens, assist in streamlining operations, and to reduce time-in-custody.” This redeployment is making the existing problems at the ports even worse and resulting in hours-long delays, since most of the CBP Officers being redeployed are from the nation’s most short-staffed land ports on our southern border. If these temporary duty assignments (TDYs) continue beyond 30-days these staffing issues and delays will continue to increase, since CBP has indicated that it **will solicit volunteers from airports, seaports and the northern border to more equitably spread out the burden of these assignments.**

NTEU urges Congress to require CBP to allocate personnel and resources appropriately to ensure timely processing of people at ports of entry and better manage the changing demographic flows at our southern border. Without addressing the 3,700 CBP Officer shortfall, allocating adequate staffing at all ports will remain a challenge.

CBP Officer Overtime

Due to the ongoing current staffing shortage of 3,700 CBP Officers, CBP Officers nationwide are working excessive overtime to maintain basic port staffing. Currently, CBP Officer overtime pay is funded 100% through user fees and is statutorily capped at \$45,000 per year. All CBP Officers are aware that overtime assignments are an aspect of their jobs. However, long periods of overtime hours can severely disrupt an officer’s family life, morale and ultimately their job performance protecting our nation.

Because of the ongoing staffing shortages, CBP Officers can be required to regularly work overtime which results in individual Officers hitting the overtime cap very early in the fiscal year. This leaves no overtime funding available for peak season travel, resulting in critical staffing shortages in the third and fourth quarter of the fiscal year that usually coincide with holiday travel at the ports.

At many ports, CBP has granted overtime exemptions to over one-half of the workforce

to allow managers to assign overtime to Officers that have already reached the statutory overtime cap, but cap waivers only force CBP Officers already working long daily shifts to continue working these shifts for more days. Officers are required to come in hours before their regular shifts, to stay an indeterminate number of hours after their shifts (on the same day) and are compelled to come in for more overtime hours on their regular days off as well. Both involuntary overtime--resulting in 12 to 16 hour shifts, day after day, for months on end--and involuntary work assignments far from home, significantly disrupt CBP Officers' family life and erode morale. As NTEU has repeatedly stated, this is not a long-term solution for staffing shortages at the ports and has gone on for far too long.

Temporary Duty Assignments at Southwest Land Ports of Entry

Due to CBP's ongoing staffing shortage, since 2015, CBP has been diverting hundreds of CBP Officers from other air, sea and land ports to severely short-staffed Southwest land ports for 90-day Temporary Duty Assignments (TDYs). Owing to the failure to fill CBP Officer positions, neither the San Ysidro nor the Nogales land ports can safely function without these TDYs. Last summer, CBP asked for volunteers for TDYs because, according to CBP, the San Diego and Tucson Field Office were experiencing critical shortages of frontline personnel, further stating that “[t]hese long-term staffing shortfalls continue to stretch the limits of operational, enforcement and training capabilities at the ports of entry.”

In November 2018, CBP began a new TDY program to support “Operation Secure Line-Mobile Field Force (MFF) Plan Implementation.” This TDY again diverts CBP Officers with MFF site security and crowd control training from other short-staffed ports of entry to sustain enforcement level posture at San Ysidro and Nogales to manage the influx of asylum seekers at these ports. Also, as the focus of TDYs changed from passenger processing to site security the number of inadmissible travelers CBP is operationally capable to process is reduced. And now, as I mentioned, “Operation Southern Support” has begun with a 30-day TDY that has already pulled 545 CBP Officer volunteers to date from southern border land ports to Border Patrol Sectors.

To end all of these TDYs, CBP must fill existing CBP Officer vacancies and fund the hiring of the additional CBP Officers called for in CBP's own WSM. In the meantime, to encourage volunteers for these TDYs and avoid forced TDYs, NTEU suggests Congress ask CBP to include the following in its future TDY solicitations:

- Increase the TDY pool by including non-bargaining unit personnel such as qualified Headquarters staff, supervisors, and other employees on special teams such as the Tactical Terrorism Response Team and the Strategic Response Team, and by including all Officers who have graduated from FLETC and who have received a sufficient amount of post-academy training;
- Schedule TDYs in such a way that the supplemental staffing through TDYs remains constant, so there is not a gap between the departure of one round of TDYs and the arrival of the next, and a surplus of volunteers for a TDY from one Field Office should be allowed to make up for a shortage of volunteers in another Field Office;

- Establish an advertised cash award for individuals who volunteer for a TDY and should offer available incentives such as student loan repayments, overtime cap waivers, and home leave; and
- Allow approved leave during a TDY.

Agriculture Specialist Staffing

CBP employees also perform critically important agriculture inspections to prevent the entry of animal and plant pests or diseases at ports of entry. Agricultural Specialists provide a critical role in both trade and travel safety and prevent the introduction of harmful exotic plant pests and foreign animal diseases, and potential ag/bio-terrorism into the United States. All ports of entry are currently understaffed relative to mission goals and workload requirements of agricultural specialists. For years, NTEU has championed the CBP Agriculture Specialists' Agriculture Quality Inspection (AQI) mission within the agency and fought for increased staffing to fulfill that mission. The U.S. agriculture sector is a crucial component of the American economy, generating over \$1 trillion in annual economic activity. According to the U.S. Department of Agriculture, foreign pests and diseases cost the American economy tens of billions of dollars annually.

Because of CBP's key mission to protect the nation's agriculture from pests and disease, NTEU urges the Committee to authorize the hiring of these 721 CBP Agriculture Specialists identified as needed by the agricultural resource allocation models (AgRAM) to address this critical staffing shortage that threatens the U.S. agriculture sector.

CBP Trade Operations Staffing

CBP has a dual mission of safeguarding our nation's borders and ports and regulating and facilitating international trade. CBP employees at the ports of entry are critical in protecting our nation's economic growth and security. **For every dollar invested in CBP trade personnel, we return \$87 to the U.S. economy**, either through lowering the costs of trade, ensuring a level playing field for domestic industry or by protecting innovative intellectual property. Since CBP was established in March 2003, however, there has been no increase in non-uniformed CBP trade enforcement and compliance personnel. Additionally, CBP trade operations staffing has fallen below the statutory floor set forth in the Homeland Security Act of 2002 and stipulated in the FY 2017 CBP Resource Optimization Model for Trade Positions. NTEU strongly supports CBP funding 140 new hires at the CBP Office of Trade through direct appropriations to support TFTEA implementation.

Opioid Interdiction

CBP OFO is also the foremost DHS component tasked with stemming the nation's opioid epidemic. In a report released on May 10, 2018, by the Senate Homeland Security and Governmental Affairs Committee Minority titled "*Combating the Opioid Epidemic: Intercepting Illicit Opioids at Ports of Entry*", CBP Officers at the ports of entry were found to "play a key role in stopping opioids and that CBP has significant shortages of Port Officers that

may be compromising efforts to seize additional opioids before they can reach U.S. communities.”

The smuggling of fentanyl and other opioids has increased markedly. According to the report, “between 2013 and 2017, approximately 25,405 pounds, or **88% of all opioids seized by CBP, were seized at ports of entry. The amount of fentanyl seized at the ports of entry increased by 159% from 459 pounds in 2016 to 1,189 pounds in 2017.**”

The scourge of synthetic opioid addiction is felt in every state and is a threat to the nation’s economic security and well-being. The majority of fentanyl is manufactured in other countries such as China, and is smuggled primarily through the ports of entry along the southwest border and through international mail and express consignment carrier facilities (e.g. FedEx and UPS). As the Senate report states, CBP Officers are, “in the majority of cases, the last line of defense in preventing illicit opioids from entering the United States...CBP’s current shortage of over 4,000 Port Officers is directly influencing operations and staffing these positions could increase CBP’s ability to interdict opioids.” The nation’s busiest land port of entry San Ysidro, along with the Tucson area land ports, account for “57% of all opioids seized by ports of entry, including 75% of all fentanyl and 61% of all heroin seized.” These two land ports are also the most critically understaffed.

On January 26, 2019, CBP OFO made their biggest fentanyl seizure ever, capturing nearly 254 pounds of the deadly synthetic opioid at the Nogales port of entry. According to the DEA, just two milligrams of fentanyl is considered a lethal dose. From the January 26 seizure alone, it is estimated that **CBP Officers seized enough fentanyl to kill 57 million people.** That’s more than the combined population of the states of Illinois, New York and Pennsylvania. The street value for the fentanyl was over \$102 million. CBP Officers also seized an additional 2.2 pounds of fentanyl pills and a large cache of methamphetamine.

Also, over the past five years, CBP has seen a nearly 50 percent increase in express consignment shipments. In FY 2013 CBP processed more than 76 million express bills; in FY 2017, that number totaled 110 million. International mail shipments have increased by more than 200 percent over the past five years, from approximately 150 million to more than 500 million. **Yet, according to CBP, over the last three years, there were only 181 CBP employees assigned to the five Postal Service International Service Centers and 208 CBP employees assigned to the Private Express Carrier Facilities.**

In the past year, the FedEx hub in Memphis processed 38 million imports and 48 million exports—equaling 86 million in total package volume. There are approximately 24 CBP Officers screening all 86 million shipments, and on average, about 15 CBP Officers are working the main overnight FedEx “sort” shift. Considering the volume at the FedEx hub, NTEU has been told that the port requires a minimum of 60 CBP Officers to facilitate the flow of legitimate freight and ensure successful interdiction of these synthetic chemicals. NTEU urges Congress to provide CBP OFO with the critical funding it needs to support these efforts at the air, sea and land ports of entry, as well as international postal and express consignment hubs.

NTEU worked with Congress on the passage of P.L. 115-271, the Synthetics Trafficking and Overdose Prevention Act, or STOP Act. The new law requires CBP to provide additional

CBP Officers to express consignment and international mail facilities and requires CBP to report to Congress on an annual basis on the individuals and companies that violate the electronic advance data requirements of the Trade Act of 2002. Requiring CBP to annually report this useful information on violators and violator penalty assessments will enhance CBP's interdiction of prohibited items from entering the U.S. through express consignment operators.

CBP Funding Sources

CBP collects Customs User Fees (CUFs), including those under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), to recover certain costs incurred for processing air and sea passengers and various private and commercial land, sea, air, and rail carriers and shipments. The source of these user fees are commercial vessels, commercial vehicles, rail cars, private aircraft, private vessels, air passengers, sea passengers, cruise vessel passengers, dutiable mail, customs brokers and barge/bulk carriers.

COBRA fees are deposited into the Customs User Fee Account and are designated by statute to pay for services provided to the user, such as 100% of inspectional overtime for passenger and commercial vehicle inspection during overtime shift hours. Of the 24,576 CBP Officers currently funded, Customs User Fees (CUFs) fund 3,825 full-time equivalent (FTEs) CBP Officers. Further, Immigration Inspection User Fees (IUF) fund 4,179 CBPO FTEs. **CUF and IUF user fees fund 8,004 CBPO FTEs or one third of the entire CBP workforce at the ports of entry.**

NTEU strongly opposes the diversion of CUFs. Any increases to the CUF Account should be properly used for much-needed CBP staffing and not diverted to unrelated projects. Unfortunately, while section 52202 of the FAST ACT indexed CUFs to inflation, it diverted this funding from CBP to pay for unrelated infrastructure projects. Indexing COBRA CUFs to inflation would have raised \$1.4 billion over ten years—a potential \$140 million per year funding stream to help pay for the hiring of additional CBP Officers to perform CBP's border security, law enforcement and trade and travel facilitation missions. **Diverting these funds has cost CBP funding to hire over 900 new CBP Officers per year since the FAST Act went into effect. These new hires would have significantly alleviated the current CBP Officer staffing shortage.**

In order to find alternative sources of funding to address serious staffing shortages, CBP received authorization for and has entered into Reimbursable Service Agreements (RSAs) with the private sector, as well as with state and local governmental entities. These stakeholders, who are already paying CUFs and IUFs for CBP OFO employee positions and overtime, reimburse CBP for additional inspection services, including overtime pay and the hiring of new CBP Officer and Agriculture Specialist personnel that in the past have been paid for entirely by user fees or appropriated funding. According to CBP, since the program began in 2013, **CBP has entered into agreements with over 149 stakeholders covering 111 U.S. ports of entry, providing more than 467,000 additional processing hours for incoming commercial and cargo traffic.**

NTEU believes that the RSA program is a band aid approach and cannot replace the need

for Congress to either appropriate new funding or authorize an increase in customs and immigration user fees to adequately address CBP staffing needs at the ports.

RSAs simply cannot replace the need for an increase in CBP appropriated or user fee funding—and make CBP a “pay to play” agency. NTEU also remains concerned with CBP’s new Preclearance expansion program that also relies heavily on “pay to play.” Further, NTEU believes that the use of RSAs to fund CBP staffing shortages raises significant equity issues between larger and/or wealthier ports and smaller ports.

Ratio of Supervisors to Frontline Personnel

Another concern is that CBP continues to be a top-heavy management organization. Since its creation, the number of new managers has increased at a much higher rate than the number of new frontline CBP hires. CBP’s own FY 15 end of year workforce profile (dated 10/3/15), **showed that the supervisor to frontline employee ratio was 1 to 5.6 for the total CBP workforce, 1 to 5.7 for CBP Officers and 1 to 6.6 for Agriculture Specialists.** Prior to 2003, the supervisor to frontline ratio was closer to 1 supervisor to 12. It is also NTEU’s understanding that nearly 1,000 CBP Officers are serving either at CBP headquarters or non-Office of Field Operations locations. This means that nearly 4,000 CBP Officers are serving in supervisory positions.

The tremendous increase in CBP managers and supervisors has come at the expense of national security preparedness and frontline positions. Also, these highly paid management positions are straining the CBP budget. CBP’s top heavy management structure contributes to the lack of adequate staffing at the ports, excessive overtime schedules, and flagging morale among the rank and file.

NTEU Recommendations

To address CBP’s workforce challenges, it is clearly in the nation’s economic and security interest for Congress to authorize and fund an increase in the number of CBP Officers, CBP Agriculture Specialists, and other CBP employees.

In order to achieve the long-term goal of securing the proper staffing at CBP and end disruptive TDYs and excessive involuntary overtime shifts, NTEU recommends that Congress take the following actions:

- Cosponsor and enact S. 1004, the Securing America’s Ports of Entry Act;
- Support funding 600 new CBP Officers in FY 2020 DHS Appropriations;
- Fund 721 new CBP Agriculture Specialists hires;
- Address the polygraph process to mitigate excessive (60%) applicant polygraph failures;
- Fully fund and utilize recruitment and retention awards, and other incentives; and
- Restore cuts in mission support personnel that will free CBP Officers from performing administrative duties such as payroll processing, data entry and human resources to increase the numbers available for trade and travel security and facilitation.

Congress should also redirect the increase in customs user fees in the FAST Act from offsetting transportation spending to its original purpose of providing funding for CBP Officer staffing and overtime, and oppose any legislation to divert additional fees collected to other uses or projects.

Shutdowns, pay freezes, and proposed cuts to benefits, rights, and protections do nothing to help with recruitment and retention of CBP Officers. The employees I represent are frustrated and their morale is indeed low. These employees work hard and care deeply about their jobs and their country. These men and women are deserving of more staffing and resources to perform their jobs better and more efficiently.

Thank you for the opportunity to provide testimony on their behalf.

Post-Hearing Questions for the Record Submitted to Randy Howe From Senator Kamala Harris	
"Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline"	
Committee:	HOMELAND SECURITY (SENATE)

Question#:	1
Topic:	Consult with CBP
Hearing:	"Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On March 29, the White House threatened to close the border that the United States shares with Mexico in an effort to prevent asylum seekers from crossing.

A core part of CBP's mission includes facilitating international travel and trade.

Did the administration consult with CBP before issuing this threat?

Response: In November 2018, CBP contributed to a White House policy and economic analysis of potential southwest border port of entry (POE) closures.

Question#:	2
Topic:	Economic Analysis
Hearing:	"Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Has CBP conducted an economic analysis of shutting down the border?

If yes, will you provide this analysis to the Committee by the end of the week?

If no, will you commit to conducting an analysis and provide the committee with your analysis?

Response: In November 2018, CBP contributed to a White House policy and economic analysis of potential southwest border port of entry (POE) closures. CBP did not finalize an independent economic analysis.

Question#:	3
Topic:	Border Closing Preparations
Hearing:	Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: The administration announced that it would give Mexico a "one-year warning" before closing the border.

What has the administration asked CBP to do to prepare for closing Ports of Entry and to assess the impact?

Response: In November 2018, CBP contributed to a White House policy and economic analysis of potential southwest border ports of entry (POE) closures. CBP has not been asked to prepare for additional or specific POE closures.

Question#:	4
Topic:	Training and Guidance
Hearing:	Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On July 9, 2019, Buzzfeed published an article entitled "Pregnant women say they miscarried in immigration detention and didn't get the care they needed." In this article, the journalists report that five women who were pregnant while in ICE detention or CBP custody reported "being ignored when they were obviously miscarrying, described their CBP and ICE-contracted jailers as unwilling or unable to respond to medical emergencies, and recounted an incident of physical abuse from CBP officers who knew they were dealing with a pregnant woman."

What training and guidance do CBP employees receive to ensure that they understand the needs of pregnant women in CBP custody?

Response: CBP complies with the *National Standards on Transport, Escort, Detention and Search* (TEDS) policy, which provides standards for the treatment of pregnant women in custody. As part of their initial training at the Border Patrol and Field Operations Academy, all agents and officers receive detailed training on TEDS; this training specifically covers pregnant women as "at-risk" detainees and the requirements for additional care for them. All officers and agents are provided with copies of the TEDS policy and are required to understand it as part of their duties.

Question: Will you provide me with all the policies and training materials that CBP uses to inform its agents and officials about caring for pregnant women in their custody? Please include guidance provided to contracted or sub-contracted staff.

Response: Please see CBP TEDS policy here:
<https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>

For those interested in the training materials used at the Border Patrol and Field Office Academies, CBP would welcome the opportunity to provide a briefing covering this topic.

Question#:	5
Topic:	Treatment of Pregnant Women
Hearing:	Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Has CBP assessed the treatment of pregnant women in CBP custody?

If yes, what outside medical experts did CBP consult in conducting this assessment, and will you commit to providing this Committee with documentation of the assessment by the end of the week?

If no, will you commit to conducting such an assessment, in consultation with outside medical experts, and provide it to this Committee within 60 days?

Response: While CBP has not undertaken an assessment specific to the treatment of pregnant women in our custody, CBP regularly assesses its operations to ensure they comply with all aspects of the TEDS policy, to include treatment of pregnant women in custody. Most recently, CBP issued an interim medical directive in January 2019 after identifying gaps in the provision of medical care to detainees. This interim directive was developed based on best practices and the input of medical professionals within CBP.

In USBP locations with contracted medical services, every pregnant female in the third trimester receives a medical assessment by a mid-level medical practitioner. For all other females in the first or second trimester, medical services are offered if there is any medical complaint, whether related to the woman's pregnancy or otherwise. Any complaint outside of non-emergency care results in a transfer to a local hospital for further assessment and where necessary, treatment.

Post-Hearing Questions for the Record Submitted to Randy Howe and Rodolfo Karisch From Senator Jacky Rosen	
"Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline"	
Committee: HOMELAND SECURITY (SENATE)	

Question#:	6
Topic:	Alonzo Death
Hearing:	"Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: It has been reported that most Customs & Border Protection (CBP) facilities along the border lack sufficient resources to provide more than basic emergency health care. In December of last year, two children died from illness while being held and transported by Border Patrol agents. An autopsy report conducted of Felipe Gomez Alonzo, 8 years old when he died, showed he died of an influenza B infection on Christmas Eve, six days after he and his father were taken into CBP custody. Some observers have noted that the incubation period for influenza B is 1 to 4 days, with the norm around two days, which suggests Felipe became ill while in CBP custody.

Was the death of Felipe Gomez Alonzo investigated?

Response: The DHS OIG is currently investigating.

Question: In addition to an autopsy report, is there a record of the nature of medical treatment that Felipe Gomez Alonzo received while in CBP custody?

Response: On December 18, 2018 at approximately 1300 hours MST, Felipe Gomez Alonzo was apprehended with his father at 3.29 miles west of the Paso Del Norte Port of Entry in El Paso, Texas after illegally entering the United States. Driving distance from that apprehension location to Paso del Norte Port (PDT) is less than 15 minutes; however, groups may be detained in the field until transportation becomes available. On December 18, at approximately 1639 hours, the father and child were transferred to the PDT processing center. While detained at PDT, the child and his father were provided hot food, snacks, juice, and water, and the agents logged six welfare checks. On December 20, 2018 at 1200 hours, the child and his father were transferred to El Paso Border Patrol Station (EPS). From December 20 to December 22, 2018 the child

Question#:	6
Topic:	Alonzo Death
Hearing:	Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

and his father were provided with showers, food, juice, and water, and the agents logged 17 welfare checks. On December 22, at approximately 2317 hours, U.S. Border Patrol transferred the child and father to the Alamogordo Border Patrol Station (ALA) to finalize processing. Upon arrival, the child and his father were provided with personal hygiene products and meals, and they received several welfare checks. On December 24, 2018 at about 0539 hours, a placement request for the child and his father was e-mailed to Immigration and Customs Enforcement's Enforcement and Removal Operations' family placement inbox. On December 24, at approximately 0900 hours, a processing agent noticed that the child was coughing and appeared to have glossy eyes. At approximately 0930 hours, based on the agents' observations, the child and his father were transferred to the Gerald Champion Regional Medical Center (GCRMC) with possible influenza symptoms. On December 24, at about 1130 hours, hospital staff conducted several tests on the child for strep throat. On December 24, at about 1245 hours, the child was given a diagnosis of common cold and given Tylenol. On December 24, at about 1320 hours, the child was evaluated for release and found to have a 103 degree fever and was held for continued observation. On December 24, at about 1450 hours, the child was released from the ER with a prescription for amoxicillin and ibuprofen. The child and his father were transported to temporary holding at the Highway 70 checkpoint. While at the checkpoint, the child and his father were offered and accepted a hot meal. At about 1700, agents provided the child with a dose of the prescribed medication as ordered by the medical staff and agents conducted several welfare checks that evening. On December 24 at 1900 hours, the child appeared to be nauseous and vomited. Agents were aware of this and helped clean up the vomit. His father declined further medical assistance as the child had been feeling better. On December 24, at about 2200 hours, the child appeared lethargic and nauseous again. As no EMT was on-duty, out of caution, agents made the decision to return the child and his father to GCRMC. On December 24, during transportation to the hospital the boy began to vomit and he lost consciousness. At 2307 hours, radio traffic indicated that the agent had arrived at GCRMC where he was met by hospital staff. The GCRMC staff were unable to revive the child and pronounced him deceased at 2348 hours on December 24, 2018.

Question#:	7
Topic:	UAC Medical Care
Hearing:	Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: What is the protocol for providing medical care in CBP detention facilities that house unaccompanied or separated children before they are transferred to the Office of Refugee Resettlement (ORR)?

Response: CBP follows its Transport, Escort, Detention, and Search (TEDS) policy nationwide regarding medical care for all detainees, as well as the CBP Directive on Interim Enhanced Medical Efforts, signed by Commissioner Kevin K. McAleenan on January 28, 2019. CBP's TEDS policy is available here:

<https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>. The CBP Directive on Interim Enhanced Medical Efforts is available here: <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/CBP-Interim-Medical-Directive-28-January-2019.pdf>.

As of May 15, 2019, medical screenings are provided to all unaccompanied or separated children arriving at the San Ysidro, Calexico, Brownsville, and Hidalgo ports of entry (POEs), where contract medical personnel have been deployed. The medical screenings are completed once the inadmissible alien is escorted into the secure secondary inspection area for processing.

Between POEs, in areas highly frequented by unaccompanied alien children (UAC) and family units, contract medical personnel complete a Mental Health Screening (MHS) Form for all UACs as part of a pilot program. Additionally, the U.S. Border Patrol conducts medical screenings on children at locations that are currently staffed by contract medical personnel. Any positive responses are reviewed by a mid-level medical provider.

If at any time in CBP processing there is a need to refer an individual for medical treatment, CBP refers the individual to an appropriate medical provider. This referral is conducted by local Emergency Medical Services (EMS) providers, or by CBP taking the person to a local medical practitioner. The results of the hospital ER are communicated to ORR in order for HHS to secure appropriate placement.

Question: Is more than basic emergency care available at CBP detention facilities for children?

Response: No. Healthcare requirements above the Basic Life Support (BLS) level are referred to the local emergency room (ER) for evaluation and treatment.

Question#:	7
Topic:	UAC Medical Care
Hearing:	Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: How often are children sedated?

Response: CBP does not sedate any person. If an individual receives “sedation,” it is conducted by medical staff at a local medical treatment facility, based on medical necessity and existing hospital protocol. CBP personnel do not provide guidance to medical personnel as to what medical actions to take in any medical cases.

The USBP does not collect data on the number of children that require some form of sedation while being treated by medical professionals at a hospital or long-term treatment facility. That data is better queried through Medical Payment Authorization Request (MedPAR) which is managed by ICE Health Service Corps.

Question: What mental health services are provided to children in custody and with what frequency?

Response: Beyond mental health screenings in certain circumstances (discussed below), CBP does not provide mental health services to those in its custody.

Between POEs, in areas highly frequented by unaccompanied alien children (UAC) and family units, medical contract personnel complete a Mental Health Screening (MHS) Form for all UAC. Mental health evaluations are also available at these locations for family unit juveniles if requested by the juvenile, a parent/legal guardian, or by USBP or contract medical staff. Any positive responses are reviewed by a mid-level medical provider.

If at any time in CBP processing there is a need to refer an individual for medical treatment, including for a mental health issue, CBP refers the individual to an appropriate medical provider. This referral is conducted by local Emergency Medical Services (EMS) providers, or by CBP taking the person to a local medical practitioner. The medical results are communicated to ORR in order for HHS to secure appropriate placement.

Question#:	8
Topic:	Trauma Care
Hearing:	"Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: What training do staff who come in direct contact with any children have in trauma-informed care and best practices for working with youth who have experienced trauma—which every single one of the children in your custody has?

Response: All CBP agents and officers receive basic first aid and lifesaving training. Select individuals receive Emergency Medical Training. The agency does not offer training to personnel for addressing psychological trauma in children.

Question#:	9
Topic:	Training
Hearing:	"Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Last year, an audio recording from a border detention center was released in which a Border Patrol agent mocked children sobbing and screaming for their parents. What actions has the Border Patrol taken to better train its agents for dealing with children, particularly children in traumatizing circumstances?

Response: All CBP trainees review the U.S. Customs and Border Protection National Standards on Transport, Escort, Detention, and Search (TEDS) Policy (October 2015) as part of routine training. The policy discusses individuals who are considered members of at-risk populations, and children are included as one of these populations. All trainees are provided a copy of the policy and are advised to read and become familiar with it, as it is part of their duties. Page 19 of the CBP TEDS policy is attached for reference.

Question: Is training provided to Border Patrol agents and other CBP employees interacting with children with respect to the physical reaction of children to trauma and the long-term effects of trauma on child development?

Response: Agents and officers do not receive training on children's physical and/or long-term reactions to trauma.

Question#:	10
Topic:	Effects on Children
Hearing:	"Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Have you observed or has your staff reported to you the effects on children who are referred to your custody after being separated from their parents?

Response: While we have observed children in CBP custody, we are not medical professionals and are not qualified to interpret the effects of the operations on the children we observed.

We have received no such reporting from staff.

Question#:	11
Topic:	CBP Detention Facilities
Hearing:	Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Please answer the following with respect to CBP detention facilities.

Do children have access to restroom facilities and drinking water at all times?

Response: Yes. CBP policy, as listed the National Standards for Transport, Escort, Detention and Search (TEDS) states, "Functioning drinking fountains or clean drinking water along with clean drinking cups must always be available to detainees." This policy also provides that all individuals, including children must have access to restroom facilities at all times.

Question: How are young children supervised?

Response: If the child is of tender age and unaccompanied, that child will have an agent assigned to monitor and care for him/her until the child has been transferred to ERO and/or HHS. Agents and officers also conduct welfare checks at regular intervals for all children in CBP custody.

Question: Is restricting access to water or food ever used as a punishment?

Response: No. CBP does not restrict access to water or food as a punishment. CBP policy in TEDS states, "Food and water should never be used as a reward, or withheld as punishment."

Question: Are siblings detained at the same facilities?

Response: CBP generally holds families apprehended together in the same facility. CBP policy in TEDS states, "Whenever operationally feasible, Unaccompanied Alien Children (UAC) siblings should not be separated, unless deemed necessary for safety purposes. In circumstances where siblings must be separated due to different immigration dispositions, such separation must be documented in the appropriate electronic system(s) of record."

Every attempt is made to hold family members in the same holding room or holding cell. However, family members may be held in separate areas of the facility in certain circumstances.

Question#:	11
Topic:	CBP Detention Facilities
Hearing:	Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Are children always separated by gender, even if a young child arrives with a teenager sibling they know and trust?

Response: In accordance with TEDS, whenever operationally feasible, UAC siblings should not be separated, unless deemed necessary for safety purposes. Generally, children are held according to age, i.e. all those children 4 and under would be kept together, 5 to 12, and 13 through 17. Children may also be held separately based on gender, if appropriate. CBP policy in TEDS states, "Officers/Agents will place each at-risk detainee in the least restrictive setting appropriate to their age and special needs, provided that such setting is consistent with the need to ensure the safety and security of the detainee and that of others." Additionally, TEDS states that adult detainees are separated by gender, and exceptions may be made on a case-by-case basis for family unity.

Question: Are immigrants, including children, routinely detained for days in consistently cold holding rooms?

Response: CBP policy in TEDS states, "When it is within CBP control, officers/agents should maintain hold room temperature within a reasonable and comfortable range for both detainees and officers/agents. Under no circumstances will officers/agents use temperature controls in a punitive manner." CBP maintains the temperature range of its hold rooms between 66 and 80 degrees Fahrenheit. These hold room temperatures are logged in the electronic custody log and checked regularly. This is checked at the beginning of every shift.

Recently, the Acting Commissioner directed that the temperature in the hold rooms be raised two degrees to increase the level of comfort for migrants.

Question#:	12
Topic:	Hiring Standards
Hearing:	"Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe the hiring standards for Border Patrol agents and other CBP employees who interact with children.

Response: CBP does not have a separate set of hiring standards specific to those personnel who interact with children. CBP's hiring process for *all* frontline personnel—to include the Border Patrol Agent (BPA) and CBP Officer occupations, which both have a high likelihood of interaction with children—is designed to reflect CBP's high standards of integrity, requiring a full background investigation, polygraph examination, and various other assessments.

To qualify at the GS-5 level, BPA applicants must have experience in their work history that demonstrates, among other skills, the ability to maintain composure and make sound decisions in stressful situations. This experience may come from participation in a community action program, where the applicant volunteers as a teacher or counselor; work as a guard or similar position that requires dealing with people; or customer relations work that requires the applicant to obtain accurate information, make logical determinations, and resolve practical problems.

In addition, applicants for all grade levels must demonstrate in a pre-employment interview that they possess the traits and characteristics important to CBP's frontline positions. These include judgment, problem solving, emotional stability, and interpersonal skills.

The vigilance, service, and integrity that have long defined our workforce will continue to be the core values of our agency. Identifying the best, most qualified individuals to join our ranks will remain one of our highest priorities.

Question: Please describe the hiring standards for contractors and non-federal employees who interact with children in CBP custody.

Response: CBP does not have a separate set of hiring standards specific to contract personnel who interact with children. The hiring process for contract personnel is designed to reflect CBP's high standards of integrity, which requires a full background investigation.

Question#:	12
Topic:	Hiring Standards
Hearing:	"Unprecedented Migration at the U.S. Southern Border" Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Does DHS have plans to change the hiring standards for federal or non-federal employees who interact with children in CBP custody?

Response: CBP currently has no plans to change the hiring standards specifically for those personnel who interact with children in custody.

CBP's hiring process for *all* frontline personnel is designed to reflect CBP's high standards of integrity, requiring a full background investigation, polygraph examination, and various other assessments.

In addition, applicants for all grade levels must demonstrate in a pre-employment interview that they possess the traits and characteristics important to CBP's frontline positions. These include judgment, problem solving, emotional stability, and interpersonal skills.

The vigilance, service, and integrity that have long defined our workforce will continue to be the core values of our agency. Identifying the best, most qualified individuals to join our ranks will remain one of our highest priorities.

Post-Hearing Questions for the Record Submitted to Timothy Tubbs From Senator Jacky Rosen	
"Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline"	
Committee:	HOMELAND SECURITY (SENATE)

Question#:	1
Topic:	Alternatives to Detention
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe the circumstances under which Immigration & Customs Enforcement (ICE) uses the following alternatives to detention (ATD):

Parole

Release on own recognizance

Bond

Check-ins at ICE offices

Home visits and check-ins

Telephonic monitoring

Electronic ankle monitor or other GPS monitoring system

Response: A decision to release aliens with conditions can be made by U.S. Immigration and Customs Enforcement (ICE) after considering the totality of circumstances the alien presents, to include both mitigating and aggravating factors. When it is determined that an alien is amenable to release, any conditions of release are considered on a case-by-case basis, primarily considering risk of flight and risks to public safety. Possible release conditions may include immigration bond, order of recognizance, order of supervision, and parole.

Immigration bonds are primarily issued to release an alien who has been placed in

Question#:	1
Topic:	Alternatives to Detention
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

removal proceedings from ICE custody. The purpose of most immigration bonds is to have a mechanism in place requiring the alien to appear in response to a properly issued notice to surrender on a particular date, at a particular place and time (a “demand notice”). In practice, most immigration bonds operate like criminal bail bonds. The person or company that posted the immigration bond on behalf of the alien (the obligor) forfeits the face value of the bond if the obligor or the alien fails to comply with the terms and conditions of the bond.

Before an immigration bond is issued, ICE first evaluates if the alien is eligible to be released from ICE custody pursuant to statutes and regulations. Release on bond indicates an alien has paid the bond amount set for the alien to guarantee that he or she will report to future court dates and comply with demand notices and any removal determination by an immigration judge (IJ). Properly issued and managed immigration bonds are meant to serve as an effective incentive for aliens to surrender into ICE custody and timely depart the United States or comply with the terms of an order of supervision.

Orders of Release on Recognizance (OREC) are used for aliens in removal proceedings who do not currently have a final order of removal. ICE has discretion to release aliens from detention on OREC without setting any bond amount, but with other appropriate conditions such as reporting to an ICE office on a regular schedule, appearing for future immigration court dates, and obeying the removal determinations of an IJ. In releasing an alien on OREC, ICE has determined that the alien is unlikely to be a threat to public safety. OREC are also used most recently along the Southwest Border for aliens apprehended by U.S. Customs and Border Protection due to the crisis and lack of available detention space.

Parole is an administrative measure used by ICE to temporarily authorize the release from immigration detention of an inadmissible arriving alien without lawfully admitting the alien to the United States. Parole does not constitute lawful admission or a determination of admissibility, and reasonable conditions may be imposed on the parole. ICE only grants parole if it determines there are urgent humanitarian or significant public benefit reasons for the individual to be in the United States, and that person merits a favorable exercise of discretion. Applicable regulations describe several categories of aliens who may meet the parole standards based on a case-by-case determination, provided they do not present a flight risk or security risk. Such individuals include aliens with serious medical conditions, pregnant women, certain juveniles, aliens who will be witnesses in judicial, administrative, or legislative proceedings in the United States, and aliens whose continued detention is not in the public interest.

Question#:	1
Topic:	Alternatives to Detention
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Additionally, those individuals who are amenable to release may be referred to ICE's Alternatives to Detention (ATD) program. ICE's ATD program is a tool that uses technology and case management to monitor compliance with release conditions for a carefully vetted group of aliens. The ATD program is not a substitute for detention. However, ATD may be appropriate for an alien who is released pursuant to an OREC, an Order of Supervision (for aliens already subject to final removal orders), a grant of parole, or a bond (unless an IJ or the Board of Immigration Appeals determined custody and did not include ATD as a provision). To be eligible for ATD, participants must be adults 18 years of age or older, removable, and at some stage of immigration proceedings.

The ATD program supervises participants, with contractor support, using a combination of home visits, office visits, alert response, court tracking, and technology. The current government contractor for ATD BI Inc. operates under the Intensive Supervision Appearance Program (ISAP) contract. The ISAP III contract allows ATD officers the ability to determine the frequency of home and office visits, types of technology (e.g., telephonic, GPS, or SmartLink), and court and alert management. Case management levels and technology assignment can be reviewed and adjusted by the ATD officer at any time depending upon change in circumstances and compliance. The ATD program uses three different forms of technology that help monitor participants while enrolled in the program:

- *Telephonic reporting* uses a participant's voice to create a biometric voiceprint during the enrollment process. Every time the participant calls in, his or her voice is compared against the voiceprint.
- *GPS monitoring* requires at least three satellites to locate a unit attached to the participant's ankle. When a participant is within range of more than three satellites, a GPS unit gives more accurate data regarding the participant's location.
- *SmartLink* enables ATD officers and case specialists to keep participants focused on the conditions of release via their smartphone or tablet. They can verify a participant's identity, determine their location, and quickly collect status change information.

Question: Are there additional ATD mechanisms or practices that ICE uses that are not listed above?

Response: All ATD programs or mechanisms that ICE currently uses are listed above.

Question#:	2
Topic:	ATD Mechanisms Studied
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Are there ATD mechanisms or practices not listed in Question 1 that ICE or another Department of Homeland Security (DHS) agency has studied between January 1, 2014 and the present?

Since January 1, 2014, has ICE studied the feasibility of implementing ATD mechanisms that include referrals to community-based organizations for support and/or utilize a case management model? If yes, please describe the nature of that study(ies) and the results.

Response: From January 2016 to June 2017, ICE Enforcement and Removal Operations (ERO) ran the Family Case Management Program (FCMP), a community-based ATD pilot initiative that employed specially trained ICE ERO case managers to encourage compliance with immigration obligations for alien families. In June 2017, after completing a top-down review of the pilot year, ICE terminated the program in order to invest those resources into pre-existing and more cost-effective ATD programs.

Specifically, FCMP was costing \$38.47 per family, per day (or roughly \$16.73 per individual), while the traditional ATD program was costing approximately \$4.40 per individual, per day. Overall, FCMP cost more than \$17 million and resulted in only 15 individuals being removed from the United States, as opposed to more than 2,200 individuals being removed from the United States for those participating in traditional ATD programs during the same period. Since the ATD program produced similar compliance rates and monitoring capabilities at a fraction of the cost, ICE determined that FCMP was not the best possible use of taxpayer resources.

Additionally, as instructed by Congress, ICE has recently incorporated many of the FCMP case management principles into its traditional ATD program. These principles were incorporated into the current ATD Intensive Supervision Appearance Program (ATD – ISAP III) through a contract modification known as Extended Case Management Services (ECMS), which will provide similar services at approximately 50 locations nationwide (much broader geographic availability than the 5 sites where FCMP operated).

Question#:	3
Topic:	GPS Tracking Criteria
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: What criteria does ICE use to determine whether to use an electronic ankle monitor or other GPS tracking device when releasing a detainee?

Response: ICE exercises its release and detention authorities in accordance with applicable law. Upon deciding whether to release an alien pursuant to an Alternatives to Detention program, such as using an ankle monitor or other GPS tracking device, participants are thoroughly vetted by ICE officers before being enrolled in the program. When making enrollment determinations, ICE officers review an alien's criminal, immigration, and supervision history; family and/or community ties; status as a caregiver or provider; and humanitarian or medical considerations, among other factors. ICE officers also continually review each individual case, assigning different technology and case management, as appropriate, throughout a participant's involvement.

Question#:	4
Topic:	Releasing Policy
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Is it ICE policy when releasing a detainee to give that individual all relevant information about upcoming court appearances?

Are ICE agents trained in that policy?

Response: U.S. Immigration and Customs Enforcement (ICE) officers provide notices of any scheduled court appearances when releasing detainees from its custody. There is an ICE Enforcement and Removal Operations (ERO) policy memorandum that provides guidance regarding the release of an alien on an order of release on recognizance. This memorandum provides guidance to ICE ERO personnel, including the requirement to provide specific information regarding the alien's requirements to report for a hearing or interview and the location where they should report.

Under the law, the Notice to Appear, the written notice of removal proceedings, provides the alien with notice that it is the alien's responsibility to immediately provide the Executive Office for Immigration Review with an address and phone number (if any) at which the alien can be contacted and any changes of address or phone number, *see* INA § 239(a)(1)(F). The alien will then receive all subsequent notifications from the court as to any changes in the time, date, or place of their hearing and other official correspondence at the address provided.

Question#:	5
Topic:	Rate of Compliance
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: For each of the ATD mechanisms listed in Question 1, what is the rate of compliance with mandatory immigration court obligations?

Response: ICE's ATD program is a tool that uses technology to monitor aliens' court appearances and compliance with release conditions while their removal proceedings are pending on the non-detained immigration court docket. ATD is not a substitute for detention, but instead complements immigration enforcement efforts by offering increased supervision of a portion of those aliens who are eligible to participate. Adults age 18 and over may be eligible for participation in ATD, but must be thoroughly vetted by ICE officers, who review an alien's criminal, immigration, and supervision history, family and/or community ties, status as a caregiver or provider, and humanitarian or medical considerations when making enrollment determinations.

However, it is important to note that detention is typically necessary in order to remove aliens who have received a final order of removal. Approximately 85 percent of ICE removals in Fiscal Year (FY) 2019 involved detention, along with 82 percent in FY 2017 and FY 2018. While ICE has expanded its use of ATD from approximately 23,000 participants in FY 2014 to 96,000 as of the end of FY 2019, this expansion has come with a number of challenges, including particularly high levels of absconders among recently enrolled family units. In FY 2019¹, the absconder rate² for family units stands at 26.9 percent, significantly higher than the 12.3 percent absconder rate for non-family unit participants, demonstrating the growing challenges such enrollments create for immigration enforcement.

Thus, while ATD can complement other immigration enforcement efforts when used appropriately on a vetted and monitored population of participants, the program was not designed to facilitate ICE's mission of removing aliens with final orders, and the agency lacks sufficient resources to locate and arrest the significant number of participants who abscond. While ICE has continued to expand the use of ATD to monitor the non-detained population in FY 2019, the program will need to be appropriately resourced in order to support continued expansion.

Of note, in FY 2019 year-to-date (YTD), through July 31, 2019, 173,091 individuals have participated in the ATD program, yet only 46,908 hearings were attended (through April 2019). As a result, while a large number of participants comply with the requirements while enrolled in the program attending scheduled hearings, office visits, home visits, and

¹ Through September 2019.

² Absconder Rate = Count of Absconders/Count of Terminations.

Question#:	5
Topic:	Rate of Compliance
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

any other applicable requirements, because there are so few hearings scheduled during this time, there is very little possibility of reaching a final disposition during the normal term of enrollment. Thus, the compliance rates during this very early stage of the process are high but are generally not reflective of participation through the full process.

To better understand how the ATD program works for full-lifecycle cases, ICE is exploring the use of a significant portion of program resources to place a smaller number of individuals on ATD throughout their immigration court process. ICE is also working with the Department of Justice Executive Office for Immigration Review to expedite the hearings of ATD participants at select locations and looks forward to providing updates on the effectiveness of these current and future program changes.

The following charts show the average length of time spent in the program by technology type, as well as compliance rates:

FY 2019 Year-to-Date³ (YTD) ATD Average Length in Program by Technology^{4 5}				
Program Status	GPS	SmartLINK	Telephonic Reporting	Overall Days
Active	187.7	450.0	837.7	498.0
Inactive	163.8	409.2	784.7	337.5
Overall	177.8	441.0	826.0	445.8

³ FY 2019 YTD data is current through April 19, 2019.

⁴ Data from BI, Inc. Participants Report (April 19, 2019). These figures represent averages.

⁵ Active participants are currently enrolled in ATD – ISAP III. Inactive participants include those who were enrolled during the fiscal year but who are no longer enrolled (this includes all those whose participation terminated for any reason, including positive terminations and negative terminations).

Question#:	5
Topic:	Rate of Compliance
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

FY 2019 - 4.30.19 Court Appearance, Adjusted to Include Pre-Order Absconders: Total Hearings⁶, All Technology		
Metric	Count	Percentage
Attended	46,908	84.3%
Total Failures	8,759	15.7%
Failed to Attend	348	0.6%
Pre-Order Absconders	8,411	15.1%
Total	55,667	100.0%

FY 2019 - 4.30.19 Court Appearance, Adjusted to Include Pre-Order Absconders: Total Hearings, GPS		
Metric	Count	Percentage
Attended	16,959	69.4%
Total Failures	7,473	30.6%
Failed to Attend	214	0.9%
Pre-Order Absconders	7,259	29.7%
Total	24,432	100.0%

FY 2019 - 4.30.19 Court Appearance, Adjusted to Include Pre-Order Absconders: Total Hearings, VoiceID		
Metric	Count	Percentage
Attended	24,403	96.0%
Total Failures	1,014	4.0%
Failed to Attend	103	0.4%
Pre-Order Absconders	911	3.6%
Total	25,417	100.0%

⁶ New methodology to account for pre-order absconders: Court Appearance Rate is total hearings attended/(total hearings scheduled + pre-order absconders); Court Appearance Failure Rate is (total hearings failed to attend + pre-order absconders)/(total hearings scheduled + pre-order absconders).

Question#:	5
Topic:	Rate of Compliance
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

FY 2019 - 4.30.19 Court Appearance, Adjusted to Include Pre-Order Absconders: Total Hearings, SmartLINK		
Metric	Count	Percentage⁷
Attended	5,546	95.3%
Total Failures	272	4.7%
Failed to Attend	31	0.5%
Pre-Order Absconders	241	4.1%
Total	5,818	100.0%

⁷ Percentages are rounded to the nearest .1 percent.

Question#:	6
Topic:	Detainees
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Please provide the number of immigrants detained by ICE in each of the years 2014 through 2018, and during the first three months of 2019.

Response:

**Number of U.S. Immigration and Customs Enforcement (ICE) Book-Ins
Fiscal Year (FY) 2014-FY 2019 Year-to-Date***

FY	ICE Book-Ins
FY 2014	425,728
FY 2015	307,342
FY 2016	352,882
FY 2017	323,591
FY 2018	396,448
FY 2019	309,912

*FY 2019 data is current through April 20, 2019. FY 2014-FY 2018 data is historical and remains current. ICE detention data excludes Department of Health and Human Services' Office of Refugee Resettlement transfers/facilities, as well as U.S. Marshals Service prisoners. ICE Enforcement and Removal Operations and ICE Homeland Security Investigations are the arresting programs for the data.

Question#:	7
Topic:	ATD Participants
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Please provide the number of immigrants subject to each of the ATD mechanisms listed in Question 1 in each of the years 2014 through 2018, and during the first three months of 2019.

Response:

Fiscal Year (FY) 2014 - FY 2019 Participants Served By Technology

FY 2014 Participants Served by Technology		
Technology	Count	%
GPS	16,536	34.3%
Telephonic Reporting (TR)	31,634	65.7%
Total	48,170	100.0%

FY 2015 Participants Served by Technology		
Technology	Count	%
GPS	18,443	37.8%
TR	30,402	62.2%
Total	48,845	100.0%

FY 2016 Participants Served by Technology		
Technology	Count	%
GPS	40,446	48.6%
TR	42,749	51.4%
Total	83,195	100.0%

FY 2017 Participants Served by Technology		
Technology	Count	%
GPS	40,301	38.1%
TR	65,421	61.9%
Total	105,722	100.0%

Question#:	7
Topic:	ATD Participants
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

FY 2018 Participants Served by Technology		
Technology	Count	%
GPS	67,424	48.60%
TR	66,780	45.10%
SmartLINK	4,878	6.30%
Total	137,082	100.00%

FY 2019* Participants Served by Technology		
Technology	Count	%
GPS	55,047	48.6%
TR	51,163	45.1%
SmartLINK	7,125	6.3%
Total	113,335	100.0%

*Data from BI Inc. Participants Reports.

*FY 2019 year-to-date data is current as of December 31, 2018.

Question#:	8
Topic:	Detention Cost Per Day
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: What is the approximate cost per day to keep an adult immigrant in an ICE-operated detention facility?

Response: As of May 2019, the average cost per day to house an adult immigrant in an ICE operated detention facility is \$182.12.

Question: What is the approximate cost per day to keep an adult immigrant in a detention facility operated by a private company?

Response: As of May 2019, the average cost per day to house an adult immigrant in a privately operated detention facility is \$129.03

Question: What are the factors that affect the cost per day of detaining an adult immigrant in a detention facility?

Response: The negotiated bed and detention guard contract rate is the most important factor affecting the cost per day of detaining an adult immigrant in a detention facility. The contract rate that ICE negotiates and agrees to with individual detention facility providers depends on several factors, such as the geographic location of the detention facility, the type of detention facility, Department of Labor wage determinations, and the requirements of the detention standards the facility is obligated to meet by its contract (i.e., ICE's National Detention Standards, Performance-Based National Detention Standards (PBNDS) 2008, or PBNDS 2011).

Question#:	9
Topic:	ATD Cost Per Day
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: For each of the ATD mechanisms listed in Question 1, what is the approximate cost per day:

For a single adult immigrant?

For an immigrant family?

For each of the ATD mechanisms listed in Question 1, please state whether ICE contracts with one or more private companies to conduct the ATD.

Response: ICE reiterates that ATD is not a substitute for detention, which is typically necessary in order to remove those who have received a final order of removal. Over 85 percent of ICE removals in FY 2019 involved detention, up from 82 percent in FYs 2017 and 2018. Rather, ATD is a tool that monitors compliance that was designed to complement ICE's immigration enforcement efforts by offering increased supervision to a thoroughly vetted group of aliens who are not detained.

For those assigned to the ATD – ISAP III, the average cost per participant for any individual adult is \$4.45⁸ per day. For those assigned to the ECMS aspect of ATD – ISAP III, the daily cost is \$6.78, regardless of whether there is one person assigned or if a head-of-household with multiple dependents is assigned. ICE contracts with one private company, Behavioral Interventions, to provide ATD – ISAP III services.

⁸ This is based upon an average of all possible costs of individual services at a proportion currently in use. There are several services available under ATD – ISAP III (e.g., office visits, home visits, residence verification, court tracking, alert resolution, GPS, telephonic reporting, SmartLINK, etc.); not every service is assigned to all participants. ICE determines which services are most appropriate, with one form of technology, and has the option to adjust service-level assignment at any time.

Question#:	10
Topic:	Family Case Management Program
Hearing:	Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Why did DHS terminate the Family Case Management Program in 2017?

Response: From January 2016 to June 2017, ICE ERO ran the FCMP, a community-based ATD pilot initiative that employed specially-trained ICE ERO case managers to encourage compliance with immigration obligations for alien families. In June 2017, after completing a top-down review of the pilot year, ICE terminated the program to invest those resources into pre-existing and more cost-effective ATD programs.

Specifically, FCMP cost \$38.47 per family, per day (or roughly \$16.73 per individual), while traditional ATD program was costing approximately \$4.40 per individual, per day. Overall, FCMP ended up costing more than \$17 million and resulted in only 15 individuals being removed from the United States, as opposed to more than 2,200 individuals being removed from the United States for those participating in traditional ATD programs during the same period. Since the ATD program produced similar compliance rates and monitoring capabilities at a fraction of the cost, ICE determined that FCMP was not the best possible use of taxpayer resources.

Additionally, as instructed by Congress, ICE has recently incorporated many of the FCMP case management principles into its traditional ATD program. These principles were incorporated into the current ATD Intensive Supervision Appearance Program (ATD – ISAP III) through a contract modification known as Extended Case Management Services, which will provide similar services at approximately 50 locations nationwide (much broader geographic availability than the 5 sites where FCMP operated).

**Post-Hearing Questions for the Record
Submitted to Commander Jonathan White
From Senator Kamala Harris**

"Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline"

April 9, 2019

Sexual Assault of Children in U.S. Health and Human Services Agency (HHS) Custody

The Office of Refugee Resettlement (ORR) received 4,556 sexual abuse allegations between October 2014 and July 2018. According to Justice Department data, sexual abuse allegations in shelters skyrocketed at the peak of the family separation crisis last spring and summer.

1. How many of the allegations in this period were against adults?

Response: The top priority of the Office of Refugee Resettlement (ORR) in the U.S. Department of Health and Human Services (HHS) is the safety and well-being of children in our care. ORR care providers diligently track all allegations of a wide range of sexually inappropriate conduct, ranging from name calling or use of vulgar language, to more serious claims. The data reflects allegations much broader than "sexual abuse" (as defined in 34 U.S.C. § 20341 and in ORR regulations at 45 C.F.R. § 411.6), to also include "sexual harassment" (as described in ORR regulations at 45 C.F.R. § 411.6) and "inappropriate sexual behavior" (a catch-all category for sexual behaviors that do not rise to the level of sexual abuse or sexual harassment).

The vast majority of the allegations reported to ORR are "inappropriate sexual behaviors" involving solely UACs, and not staff or any other adults. The vast majority of allegations of "sexual abuse" involve "UAC-on-UAC" allegations; the distinct minority involve adults.

Over the past four years, there were 171 staff-on-UAC sexual abuse allegations for over 182,806 children in ORR care—that is, less than 0.10 percent (1 per 1,000) of all children referred to ORR custody during that period. Sixteen of the 171 were substantiated (that is, less than 1 out of 10,000 children, or .01 percent). None of those cases involved ORR staff; they involved individuals who worked for grantees. Those individuals were terminated, except for one individual, who resigned before the investigation.

2. Of these allegations against adults, how many of them involved federal employees versus contractors?

Response: None. ORR federal employees have not been involved in any allegation of sexual abuse.

3. How many of these allegations were referred to DOJ?

Response: ORR care providers report to the DOJ any allegations of sexual abuse that are subject to federal reporting laws or could constitute violations of federal law. Of the 4,556 allegations of sexual misconduct, 1,303 allegations of sexual abuse were reported to DOJ.

4. When did HHS first learn about these allegations?

Response: Care providers must report sexual abuse, sexual harassment, or inappropriate sexual behavior that occur in ORR care immediately but no later than four hours after learning of the allegation.

ORR reviews every report of sexual abuse submitted by care providers to ensure that care providers comply with ORR regulations and policies. Care providers must use multiple protection measures to ensure the safety and security of victims, including housing changes within a facility, transfers to a different facility, and emotional support services. ORR also reviews allegations to ensure that care providers respond appropriately to the allegations using child welfare principles.

5. Did you or someone else at the HHS notify the U.S. Department of Homeland Security (DHS) about the sexual abuse incidents happening in ORR facilities before or during the implementation of DHS's family separation policy?

Response: I do not recall discussions on reports or allegations of sexual abuse in ORR facilities in any conversations.

6. Prior to becoming aware of these allegations, what processes did HHS have in place to assess the fitness of shelter staff for work with children?

Response: ORR began collecting data specific to sexual abuse in October 2014. ORR's Interim Final Rule on Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children (IFR) (45 CFR Part 411) was published in December 2014.

Prior to the implementation of the IFR, care provider facilities used the definition of sexual abuse in state law to report allegations according to state licensing requirements and mandatory reporting laws. With the publication of the IFR, care provider facilities, regardless of their state of operation, began using one standardized definition for sexual abuse and sexual harassment to ensure consistent reporting. As the IFR was being implemented, the number of allegations reported to ORR increased as care providers began reporting a broader range of incidents, in a consistent manner.

A. Since learning of these allegations, has HHS changed its standards or policies on responding to allegations of sexual assault against children?

Response: As a result of publishing the IFR, ORR has implemented a number of safeguards designed to prevent sexual abuse in care provider facilities. Care providers must individually assess children and youth for risk of being a victim or a perpetrator of sexual abuse while in ORR custody and use the results of the assessment to inform the minor's housing, education, recreation, and other service assignments.

ORR is committed to ensuring that children and youth in ORR care have multiple ways to report any sexual misconduct that may occur. UAC must receive an orientation regarding issues related to sexual misconduct within 48 hours of admission to a facility. Children and youth in ORR care must have access to and instructions on how to report sexual abuse, sexual harassment, and inappropriate sexual behavior verbally and in writing to care provider staff, child protective services (CPS), the UAC Sexual Abuse Hotline, consular officials, and a local community service provider or national rape crisis hotline if a local provider is unavailable. ORR has a UAC Sexual Abuse Hotline that UAC and third parties (including sponsors, parents, and other stakeholders) can use to report any information about sexual misconduct in an ORR facility.

Care provider facilities must provide UAC access to telephones with preprogrammed numbers for the UAC Sexual Abuse Hotline, CPS, and the local community service provider or national rape crisis hotline. Care provider facilities include other preprogrammed telephone numbers, such as telephone numbers for consulates or a legal service provider, in order to avoid any stigma in using the preprogrammed telephones. Preprogrammed telephones must be placed in areas of the facility where children may easily access them without assistance from staff but where they are also afforded some level of privacy so that other children and staff cannot easily listen to telephone conversations.

ORR requires all care providers to complete pre-employment background checks on all potential staff, contractors and volunteers to ensure they are suitable to work with minors in a residential setting. Care providers are prohibited from hiring or utilizing the services of any applicant, contractor, or volunteer who has engaged in, attempted to engage in, or has been civilly or administratively adjudicated to have engaged in sexual abuse, sexual harassment, intimate partner (domestic) violence, or any type of inappropriate sexual behavior. Care providers facilities are also prohibited from hiring or utilizing the services of any applicant, contractor, or volunteer who, as an adult, perpetrated any crime involving a child, regardless of how long ago the incident occurred, or a violent crime within the past 10 years. ORR recently revised Section 4.3 in the ORR Policy Guide (<https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.3>) to provide additional guidance on applicant screening.

Care provider staff are required to complete a number of pre-employment trainings. These trainings ensure that staff understand their obligations under ORR regulations and policies. Trainings include communicating with UAC, avoiding inappropriate relationships, reporting procedures, and sensitivity regarding trauma. Care provider facilities must tailor trainings to the unique needs, attributes, and gender of the UAC in care at the individual care provider facility. Staff must complete refresher trainings every year or with any policy change. Additionally, ORR provides periodic trainings on topics related to preventing sexual abuse. ORR also conducts monthly calls to update care providers on sexual abuse prevention issues.

ORR continues to examine and implement safeguards designed to prevent sexual abuse in care provider facilities. Additionally, ORR has increased its capacity to respond to allegations by hiring staff members, including Prevention of Sexual Abuse Coordinators, who are dedicated to sexual abuse prevention issues.

Trauma Experienced by Central Americans in ORR Custody

According to a 2017 report by the Center for Global Development, there is a direct relationship between violence in Central America and child migration to the U.S.

7. In your experience, to what extent does violence and unrest contribute to children and families arriving at our border?

Response: Historically, children who are referred to the ORR Unaccompanied Alien Children (UAC) Program identify violence and crime in home country as a primary reason for their coming to the United States. Other reasons children report coming to the United States are to pursue educational or employment opportunities that do not exist in their home country, or to join family members living in the United States.

8. In your work with unaccompanied children and those who arrive with family members, how common is it for young children to have witnessed violence?

Response: For those children in the UAC Program, prior experiences of witnessing violence is a common but not universal life experience. This reflects the prevalence of violence in the countries from which children depart on the journey, particularly El Salvador, Guatemala, and Honduras. More than 90 percent of the children referred to ORR are nationals of these countries. On the journey to the United States, children often experience or witness violence, as this journey is typically facilitated by transnational criminal organizations who exploit, and in many cases, abuse children and families.

9. Does family separation exacerbate the trauma experienced by children who witnessed acts of violence—either in their home country or during the journey?

Response: The scientific literature on trauma and toxic stress in children strongly indicates that among the most important protective factors for children with past exposures to traumatic events is the consistent and nurturing presence of the parents. For this reason, separation of children from their parents is both a traumatizing event in its own right, and has the potential to increase long-term behavioral and physical health risks to children of prior traumatic exposures, such as violence in home country or on the journey to the United States.

UNPRECEDENTED MIGRATION AT THE U.S. SOUTHERN BORDER: THE EXPLOITATION OF MIGRANTS THROUGH SMUGGLING, TRAF- FICKING, AND INVOLUNTARY SERVITUDE

WEDNESDAY, JUNE 26, 2019

**U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
*Washington, DC.***

The Committee met, pursuant to notice, at 9:30 a.m., in room 342, Dirksen Senate Office Building, Hon. Ron Johnson presiding.

Present: Senators Johnson, Portman, Lankford, Scott, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. This hearing will come to order. I want to welcome everybody for attending. I want to thank the witnesses, first of all, for your service to this country.

The issues we are dealing with here are challenging, to say the least. I was at the opening ceremony with Senator Carper, opening up St. Elizabeth's, and the comment I made there is it is pretty easy, from the dais here, to criticize, take potshots, to detail out what problems are not being addressed as perfectly as we would like to see, but I am thoroughly convinced, from all the contact I have had, quite honestly, the honor and privilege in working with the men and women of the Department of Homeland Security (DHS), I am thoroughly convinced that the men and women are showing a great deal of integrity, dedication, dignity, and courage in trying to deal with this horrific situation. We will talk a little bit more about that.

I would ask that my written statement be entered into the record.¹

This hearing, and it is called "Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude," really started a couple of years ago with Senator Portman holding a hearing through his Permanent Subcommittee on Investigations (PSI) on an example of involuntary servitude at an Ohio egg farm. More recent news stories after the Robert Kraft massage parlor scandal, The New York Times wrote a really good investigative story, just laying out the reality of these massage parlors, and often Asian women that

¹The prepared statement of Senator Johnson appears in the Appendix on page 303.

had been smuggled, trafficked into this Nation, they come into this country with a \$30,000 or \$40,000 debt owed to their human traffickers, and, of course, they pay it off through prostitution. Disgusting reality, but that is the reality.

My most recent trip to McAllen—I made a couple in the last couple of months with Senator Hassan and Senator Peters—there were a couple of things that got my antenna definitely twitching. First of all, we were briefed and were told about the detection of a number of fraudulent families, and we really do not know how large that is. I have seen different things—13, 25, and 33 percent. We just really do not know. We were told about a 3-year-old boy left in a hot cornfield with just a nonworking telephone number and his name supplied, written out. The telephone number was written on his sandal and we saw a picture of that.

Senator Hassan, Senator Peters, and I, when we went through the McAllen facility, saw an 18-month-old little girl struggling to get away from, I do not know, a 40-or 50-year-old man. Having just been briefed about fraudulent families, I mean, I do not know the truth there but it did not look like that was the daughter of that man. I could be wrong, but I could not help but wonder what was going to happen to that 18-month-old girl if that was not her father.

At the border, the last two trips I have made, I have been surprised in talking to the people who just crossed—women, men, with tender-aged children. None of them are admitting to paying their human traffickers any money, which is a concern for me when you also tack on the evidence that we are seeing of these family units showing up at stash houses.

The process is, again, completely out of control, overwhelmed. People are turning themselves in to U.S. Border Patrol (USBP), Border Patrol is overwhelmed in their facilities—I think something like 19,000 people held at border patrol facilities, that according to the now former director of the Customs and Border Protection (CBP), or of Border Patrol, the capacity is only 4,000.

But trying to process people as quickly as possible, the largest group on record now, 1,000 people coming in through El Paso, and trying to process them, complete their file, turn them over to U.S. Immigration and Customs Enforcement (ICE). There is a backlog there because ICE does not have enough beds to hold them, and then for unaccompanied alien children (UAC), trying to turn them over to the Department of Health and Human Services (HHS), where there is not enough capacity, or into non-governmental organizations (NGO) to find family members, help them buy tickets to just get dispersed all over America. You would think they would be dispersed all over America but instead, some of them are showing up at some of these stash houses, and of course, in testimony we will hear stories of those people, probably about ready to be put into involuntary servitude, but we have records of people being beaten, videos taken of that, videos sent back down to their home countries, demanding payment.

Once we got back from that trip, a story broke in Wisconsin. I am going to read you some excerpts from a story that just ran in the Milwaukee Journal Sentinel on June 20. “Five people were indicted in late May, in a Georgia-based human trafficking scheme

that Federal authorities say illegally brought dozens of Mexican workers to work on Wisconsin farms.

"The defendants, through two companies they operated, received U.S. Department of Labor (DOL) approval to bring the Mexican nationals to the United States to work on Georgia farms through a program that allows employers to hire seasonal foreign workers if they cannot find domestic workers to cultivate and harvest crops. Thus, the workers were in the country legally.

"But according to the indictment, the defendants who illegally brought the employees to work on Wisconsin farms gave them false IDs and took away their passports so they could not leave. The workers faced threats and were made to believe they would suffer serious harm if they left. All but one of the workers identified as victims told authorities they had to pay recruiting fees ranging from \$200 to more than \$600, to be placed on a list to come to work in the United States. Some say they also had to turn over titles to their properties in Mexico, their families' homes or land, as collateral to get the job.

"The workers said they were left without medical attention when they got sick and were forced to work more than 10-hour days without being allowed to take breaks other than lunch. Some workers said they were not always provided water, even on hot days. They were told not to talk with anyone outside the company, not to leave their Wisconsin motel without supervision or permission. Two workers said they were threatened with deportation if they left. Another feared not ever being able to return to work legally in the United States if he was deported."

Now again, this is the exploitation of migrant workers in the country legally. I have no idea. I was hoping this hearing would give us some sense of how prevalent this is. I do not think we are going to get that. I think we will hear some other examples. Maybe it is not that big of a problem. I have a sense that it is a huge problem.

I think we should get our chart up here.¹

You have all seen this. I have had to turn the piece of paper the long way. Through May, through 8 months of this fiscal year (FY), more than 400,000 unaccompanied children or people coming in as families—generally one adult, one child—have crossed the border illegally and been apprehended, and processed and basically dispersed. If we are to maintain May's rate, that number would exceed 800,000 by the end of the fiscal year, in just four more months.

I think we have seen a slight decline, based on the weekly numbers. It is getting hot. Mexico seems to be doing more, so hopefully we will not hit that 800,000 number. But, I do not see how anybody can take a look at this and not realize, this is a huge problem that must be addressed, and we are simply not addressing it, not effectively.

I did not have time to have a picture blown up but we have all seen it, of Oscar Alberto Martinez Ramirez and his 23-month-old daughter, Valeria. Now I realize tragedies occur all over this country, all over the world. I do not want to see another picture like

¹The chart referenced by Senator Johnson appears in the Appendix on page 322.

that on the U.S. border. I hope that picture alone will catalyze this Congress, this Senate, this Committee to do something.

I called up Senator Peters earlier this morning. I said I had half a mind to canceling this hearing and instead just have a discussion between what I believe are U.S. Senators of good faith, that have sat through 30 or more hearings of this problem on the border, and start coming to some conclusions. What can we agree on to actually start improving this situation?

What I have found, in 8½ years here in the U.S. Senate, there is not much of a problem-solving capability, not for the big ones, not for the big problems. This Committee has actually demonstrated pretty good capacity for solving smaller problems, on a totally nonpartisan basis, quite honestly. I am pretty proud of that. We should all be proud of that. Our staffs ought to be proud of that.

Just last week, in our mark-up, we addressed the problem of government shutdowns, and Senator Lankford, Senator Hassan, and I know Senator Portman, Senator Paul had other bills, but we passed a bill to end government shutdown. Hopefully the rest of the Senate will pick that up. Hopefully the House will pass that and we will never have to have another shutdown again.

This is a much more difficult problem we are dealing with here. What I proposed to Senator Peters—and again, I appreciate the Senators we have here at the dais, and I am also talking to the other Senators' staffs, and I am dead serious about this. I want to set up our table down there, like a mark-up, but it is not going to be a mark-up, and in a very organized process, an organized fashion, I want to go through a problem-solving process. That is what we have been doing with all these hearings. We have been gathering a lot of information. We still need more information.

But I want to have an open and honest and genuine discussion about the scope of the problem, the root causes of this problem, and what we can do to start solving it. Continuous improvement. We are not going to solve this overnight, but we can make some improvement in the situation. We have to start doing something—Congress. The men and women at DHS are doing what you can do, with limited resources. Congress has to act, and it has to start with an honest and open discussion and conversation.

We will go back and forth, find the areas of agreement. I do not know if that ends up in an overall piece of legislation or elements that could be tacked onto a piece of legislation that would probably be under some other committee's jurisdiction, but we need to start doing something. It is well past time. And that picture that all Americans woke up this morning looking at, again, should be used as a catalyst for that kind of action.

So again, one thing that we are going to try and do—and Senator Peters has been great working with me on this—but hopefully we can sign a letter in support of Operation Safe Return, a pilot program, very small in scope, but a program that is designed to rapidly and more accurately determine those families that clearly do not have a valid asylum claim and safely return them to their home country, as a message to people in Central America—do not indebt yourself to these human traffickers. Do not mortgage your home. Do not pay them a year's worth of salary. Because on a bi-

partisan basis, we are not going to let the human traffickers exploit our broken system. And then the next step would be to actually start fixing that system.

But I think the beauty of the pilot program, Operation Safe Return, is while it is being implemented we are going to be tracking its effectiveness. We are going to find out how many people actually do have a valid asylum claim. We will be giving them interpreters. They will have access to counsel. And that is something, on a bipartisan basis, we can send a strong signal and message that we want to fix this problem.

So again, I have yammered on a lot longer than I normally do in an opening statement, but if there was ever a moment that requires that the nonpartisan effort of the Members of this Committee, I would say it is now. And so that is what I am asking for, for every Senator, every Staff member in this Committee. Let's come together. Let's have these discussions. These will be multiple meetings, a number of hours. But I am asking for full involvement and a very open and genuine discussion.

With that, Senator Peters.

OPENING STATEMENT OF SENATOR PETERS¹

Senator PETERS. Thank you, Mr. Chairman, and I can assure you all of us on this side of the aisle also want to work on this issue. It is an important issue and I think we can hopefully come together and have some solutions to what is a very vexing problem impacting our country and people right now.

But I also want to thank you for convening this particularly hearing here today, and I look forward to discussing with our witnesses how we can combat human trafficking. It is a horrific criminal enterprise that exploits vulnerable people arriving at the Southern Border, and really all across our country.

Desperation drives people into the hands of human traffickers, and that same desperation drives some families to attempt a journey to the north on their own. And like the Chairman and, I think, everybody on this Committee—I speak for all of us—we were devastated by the photo showing Oscar Martinez Ramirez and his daughter, Valeria, who drowned clinging together in the final moments as they attempted to cross the Rio Grande Valley (RGV) for asylum here in the United States.

No one is more vulnerable than a child, and like most Americans I am heartbroken that migrant children in U.S. custody, including toddlers and infants, have been subjected to unsafe conditions and sometimes denied basic necessities. It is unconscionable that the Administration would argue in court that it should not be required to provide soap and a toothbrush for a child in its custody. Even prisoners of war are provided with soap, under the Geneva Conventions. There is no question that children in Federal custody deserve basic necessities, including warm meals, blankets, and access to medical care. We must prioritize keeping families together and keeping our children safe and healthy.

I have made inquiries to the Customs and Border Protection, Immigration and Customs Enforcement, and the Office of Refugee Re-

¹The prepared statement of Senator Peters appears in the Appendix on page 305.

settlement (ORR) to learn more about these reports and the conditions experienced by children in U.S. custody, and I will continue working with my colleagues to ensure that they are treated with dignity and receive appropriate care.

We cannot fully address this situation on our Southern Border and keep children safe without disrupting smuggling networks and combating the scourge of human trafficking. Human trafficking is the fastest-growing criminal enterprise in the world, and it is a serious issue along both the Northern as well as the Southern Borders. My home State of Michigan has the sixth-highest number of reported cases of human trafficking in the country, and despite the scope of this problem there is a lot we do not know about the illicit business of human trafficking.

We need a better understanding of how transnational criminal organizations (TCOs) operate, finance, and profit from these smuggling rings. We need to work with Mexico and the Northern Triangle countries to address corruption, lawlessness, and other root causes of immigration. We need strong, stable border security policies.

Traffickers thrive on chaos and leverage American threats of future crackdowns to induce families to quickly embark on this dangerous journey. We need less chaos. We can all agree that the status quo is both unacceptable and unsustainable. We all share the goal of protecting vulnerable people from human traffickers.

That bipartisan support is reflected in the supplemental funding bill the Senate will soon be considering. This legislation was approved last week by the Appropriations Committee by a vote of 30–1. It includes critical resources to help offices like Homeland Security Investigations (HSI) root out smuggling networks. We must provide the right resources in addressing the challenges we face at our Southern Border and we need a full understanding of the facts on the ground to properly align efforts across the Federal Government.

Chairman Johnson and I share an appreciation for data-driven discussions. We need to improve the Department of Homeland Security's data analytics in order to better combat transnational criminal organizations, disrupt human trafficking, and deliver long-term solutions to secure our borders to protect vulnerable populations.

So I want to thank our witnesses for being here today. I look forward to your testimony and hearing more about how we can stamp out human trafficking.

Chairman JOHNSON. Thank you, Senator Peters.

It is the tradition of this Committee to swear in witnesses, so if you will all stand and raise your right hand.

Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. HASTINGS. I do.

Mr. HOWE. I do.

Mr. NEVANO. I do.

Chairman JOHNSON. Please be seated.

Our first witness is Brian Hastings. Mr. Hastings currently serves as the Chief of Law Enforcement Operations in the U.S.

Border Patrol Headquarters in Washington, DC. Previously he was the Chief Patrol Agent of the Buffalo Sector Office in New York. Mr. Hastings.

TESTIMONY OF BRIAN S. HASTINGS,¹ CHIEF, LAW ENFORCEMENT OPERATIONS DIRECTORATE, U.S. BORDER PATROL, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. HASTINGS. Thank you, Chairman Johnson, Ranking Member Peters, and Members of the Committee. It is my honor to represent the men and women of the Border Patrol before you today, as they are hard at work addressing the current crisis on the border.

Interdicting illegal aliens, drugs, cash, and weapons at the border is a key component of U.S. border security, and by extension, our national security. Cartels and other transnational criminal organizations, are a threat that requires comprehensive strategy and an aggressive approach across government.

I am sorry to report that Border Patrol's contribution to this whole-of-government effort is currently strained, as we are forced to devote 40 to 60 percent of our manpower to the humanitarian flow that serves as a lucrative line of business for smuggling organizations.

We are overwhelmed by the sheer volume of apprehensions and cannot conduct in-depth interviews that provide vital intelligence on smuggling and trafficking networks. While agents are distracted with the nearly 200 large groups apprehended this year, trafficking organizations are using these opportunities to move illicit narcotics and aliens seeking to evade apprehension. Simply put, the current humanitarian crisis has forced us to put border security and national security at risk.

TCOs conduct their illicit operations without regard to human life. Smugglers control where and how aliens cross our border, putting lives at risk. In the Del Rio Sector alone, Border Patrol rescues have risen from 44 individuals all of last year to over 400 so far this year.

Smugglers are often placing children in nothing more than make-shift rafts or on pool toys to cross the dangerous Rio Grande River. On multiple occasions, smugglers have pushed adults and children out of these rafts, knowing that agents would prioritize the preservation of life while the smugglers swam back to Mexico to evade arrest.

So far this fiscal year, Border Patrol agents have rescued more than 3,400 people in distress along the border and saved nearly 2,500 people crammed into tractor-trailers. Earlier this month, agents freed 14 people from a locked and unventilated trailer compartment that measured 124 degrees. All of these people paid smugglers to bring them into this country and nearly paid with their lives.

Others were not so fortunate. This past weekend, in the Rio Grande Valley, they mounted an extensive search effort when subjects reported that they had left several children who had died just

¹The prepared statement of Mr. Hastings appear in the Appendix on page 308.

north of the border. Sadly, on Sunday night, agents recovered the bodies of three children and one adult in the thick brush.

Unfortunately, I know that these will not be the last tragic deaths that we encounter. Summer temperatures are increasing and we continue to see high volume of families and children cross the border. Border Patrol has apprehended more than 664,000 illegal aliens on our Southwest Border so far this year, a nearly 140 percent increase compared to the same timeframe last year.

While June is beginning to show signs of seasonal decline that we expect in the summer months, we are still setting record highs. Just 3 weeks into the month we have already surpassed the apprehension level of every June since 2007.

The flow continues to overwhelm resources throughout the immigration system. Border Patrol has made significant investments in humanitarian care, including consumables, soft-sided facilities, medical support, and transportation. We have requested additional funds for this purpose in the supplemental as well.

We have been forced to direct manpower away from the border security mission to alien processing, simply to keep pace with the high level of apprehensions. We have detailed agents, we have shut down checkpoints, pulled agents from task forces, canceled leave, canceled training to address this crisis.

Since we began direct releasing non-processed criminal family units on March 19, we have significantly reduced the time families spend in our custody after processing. With more than 96,000 family members released so far, this currently represents over 60 percent of the apprehensions but only about 25 percent of those in custody. Together with our partners we have reduced the number of people in Border Patrol custody from the peak of 19,000 in May to 12,000 to 13,000 today.

Of significant concern are the single adults and unaccompanied children that are spending extended time in custody. Our facilities simply were not designed for long-term care in custody. I cannot stress enough the immediate impact of funding for ICE and HHS bed space would have on the Border Patrol's in-custody population, for both numbers and the duration.

In the immediate term, we need Congress to provide supplemental funds requested by CBP and our partners, but the funding will only do so much without a long-term fix. I urge Congress to pass legislative changes that we have repeatedly requested, to stop the draw of UACs and families.

I thank you for your time and I look forward to your questions.

Chairman JOHNSON. Thank you, Chief Hastings. Our next witness is Randy Howe. Mr. Howe is the Executive Director for Operations for U.S. Customs and Border Protection. In this role, he oversees 30 field offices and 328 ports of entry. Mr. Howe.

TESTIMONY OF RANDY HOWE,¹ EXECUTIVE DIRECTOR FOR OPERATIONS, OFFICE OF FIELD OPERATIONS, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. HOWE. Good morning, Chairman Johnson, Ranking Member Peters, and distinguished Members of the Committee. It is an honor to appear before you today on behalf of CBP's Office of Field Operations (OFO).

When I last appeared before this Committee in April, I described the challenging conditions at our ports of entry (POEs). I mentioned long wait times for cargo processing and ballooning passenger wait times. I explained the ripple effects that redirecting CBP personnel would have on the trade community, the supply chain, and the American consumer, and I asked that you consider legislation action that would help address this crisis.

I wish I could say that conditions at the ports of entry have improved or that our Border Patrol colleagues no longer require additional manpower. I also wish I could say that CBP's Office of Field Operations at our ports of entry were able to dedicate all of its energies toward our priority missions—national security, counter-narcotics, economic security, and the facilitation of lawful trade and travel.

But the fact is that the conditions at our ports of entry have not improved. Most every statistic is higher. More inadmissible migrants are at our Southwest ports of entry, long wait times, more detainees in custody, and more officers from our ports of entry have been redirected to assist the Border Patrol.

The variables driving this crisis are the same—unprecedented numbers of family units and unaccompanied children from Central America, many in large groups, and nearly all of them seeking asylum and arriving without proper documentation. And spikes in migration, like the one we are experiencing on the Southwest Border, can both fuel and conceal human trafficking.

The International Labor Organization estimates that there are over 40 million victims of human trafficking globally. In terms of population, that is more than the State of California. Seventy-five percent of them are female and a quarter are children.

Due to our unique position at our ports of entry, CBP officers play a critical role in our country's efforts to stop human trafficking. Earlier this month, CBP officers and ICE Homeland Security Investigation agents arrested Naasón Joaquin García, the leader of an international religious organization at Los Angeles International Airport. He was charged with human trafficking, production of child pornography, and forcible rape of a minor, among other felonies.

Because our officers are among the first people travelers encounter when they enter the United States, we are trained to detect the signs of human trafficking. In addition, our interviews are crucial for identifying victims of trafficking because the interview determines the purpose of their travel. For example, in 2017, CBP officers at Dulles Airport interviewed a woman from Spain who had arrived from Paris with her minor child. The woman stated she

¹The prepared statement of Mr. Howe appears in the Appendix on page 308.

was a victim of human trafficking and that a Russian criminal organization was forcing her to work as a maid and have sex with men against her will to pay off a debt.

The traveler added that the Russian organization had grown impatient at the rate that the debt was being paid off, and were sending her to the United States to earn money more quickly. Alerted by CBP and ICE's Human Trafficking Division, we were able to take the woman and child to a shelter for further processing and interviews.

Not every trafficking situation is so straightforward. That is why education is important. In 2013, CBP launched the Blue Lightning Initiative to boost awareness about human trafficking in the airline industry. Together with the Department of Transportation (DOT), the Blue Lightning Initiative provides training on how to recognize indicators of trafficking and how to report this suspected trafficking to law enforcement.

We do everything we can to recognize and intercept human traffickers and hopefully rescue their victims, but we cannot do it alone. We work closely in collaboration with ICE and other law enforcement partners.

I thank you for your time and I look forward to your questions.

Chairman JOHNSON. Thank you, Mr. Howe.

Our final witness is Gregory Nevano. Mr. Nevano is the Assistant Director with Homeland Security Investigations. He previously served as Chief of Staff to the Deputy Director of Immigration and Customs Enforcement. Mr. Nevano.

TESTIMONY OF GREGORY NEVANO,¹ ASSISTANT DIRECTOR FOR INVESTIGATIVE PROGRAMS, HOMELAND SECURITY INVESTIGATIONS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. NEVANO. Good morning, Chairman Johnson, Ranking Member Peters, and distinguished Members of the Committee. I am honored to appear before you today to represent the more than 8,500 brave men and women from U.S. Immigration and Customs Enforcement Homeland Security Investigations to provide an update on our efforts to combat human smuggling and human trafficking and the ongoing security and humanitarian crisis at our Southern Border.

Throughout my nearly three-decade career, I have witnessed firsthand the perils individuals are willing to endure to seek a better life in the United States. There is no better illustration of this than in June 1994, when I encountered 11 remaining stowaways hidden in a container on a vessel in South Boston, Massachusetts. The stowaways spent nearly 2 weeks in the container with limited food and water and only a small hole cut in the side of for them to breathe.

As a young officer, this incident made me appreciate the freedoms we often take for granted as well as to treat every person I encounter in the line of duty with dignity and respect.

Human smuggling and human trafficking are often conflated as one in the same type of crime. I would like to take a few moments

¹The prepared statement of Mr. Nevano appears in the Appendix on page 316.

to explain the key differences between them. Human smuggling involves the provision of a service for a fee, typically transportation to an individual who voluntarily seeks to enter a foreign country illegally. In fiscal year 2018, HSI initiated 1,671 cases, made 4,081 criminal arrests, and 2,987 administrative arrests for human smuggling.

Human trafficking, however, is a crime involving the exploitation of someone for the purposes of compelled labor or a commercial sex act, either a minor or through the use of fraud, force, or coercion. Often a dream for a better life in the United States starts off as a human smuggling event, where the person is complicit to the act but turns quickly into a human trafficking event. In fiscal year 2018, HSI initiated 849 cases, made 1,588 criminal arrests, and rescued 308 victims of human trafficking.

Our intelligence indicates desperate migrants pay smugglers upwards of \$8,000 to be smuggled from the Northern Triangle countries and over \$70,000 to be smuggled from an Eastern Hemisphere country on their illegal journey. To put this in perspective, consider a kilogram of cocaine is estimated at just about \$30,000 U.S. dollars, and therefore it is more lucrative for a transnational criminal organization to smuggle a person than it is narcotics.

A key component of HSI's efforts to combat human trafficking is the Victim Assistance Program, which employs a victim-centered approach whereby equal value is placed on the identification, rescue, stabilization of the victims, and on the deterrence, investigation, and prosecution of the trafficker. I would like to thank Congress for appropriating \$7.5 million to HSI in February 2019. This funding will be used to enhance our Victim Assistance Program by hiring nearly 60 employees. These employees will significantly assist HSI in dealing with the humanitarian crisis along our Southern Border.

In response to this crisis, beginning in April 2019, HSI dedicated over 400 personnel to assist CBP in combating this issue. HSI deployed teams to interview persons suspected of attempting entry by fraud, including as part of a fraudulent family unit. To date, HSI has identified 316 fraudulent families, 599 fraudulent documents, and presented 629 individuals to the Department of Justice (DOJ) for various criminal violations.

In furtherance of our efforts to combat this crisis, in early May 2019, HSI initiated a rapid Deoxyribonucleic acid (DNA) pilot program in El Paso and McAllen, Texas. During this operation, a total of 84 family units were DNA tested, after providing consent. Sixteen family units were found to be fraudulent during the testing. About half of the confirmed fraudulent family units were identified prior to DNA testing, when the adult alien recanted their claim of a familial relationship when asked to consent to the test.

There is no better case illustration but when a 51-year-old Honduran male confessed prior to testing that he was not the father of the infant child he initially claimed to be his son, and purchased the child for \$84.

In addition to DNA testing, in early May 2019, HSI and CBP began identifying adult migrants and accompanying children that entered the United States as alleged family units along our Southern Border. However, the children have subsequently departed the

United States with unrelated adults via commercial airlines to the Northern Triangle. HSI is currently investigating these incidents to determine if these children are being used and recycled by adult migrants for the purposes of defrauding the United States.

HSI is committed to augmenting CBP's resources at our Southern Border to ensure the safety of children and to prevent them from being utilized by criminal enterprises to exploit our immigration laws. However, without additional congressional support we will be unable to sustain this effort.

I thank you for the opportunity to appear before you today and I look forward to answering your questions.

Chairman JOHNSON. Thank you, Mr. Nevano. Normally I would throw questions out to our Committee Members right away but I have a couple I want to go over quickly.

Mr. Hastings, you talked about current levels, 12,000 to 13,000 being held in CBP custody. John Sanders quoted, in the newspaper today, said the capacity of Border Patrol stations is about 4,000. Is that pretty accurate?

Mr. HASTINGS. Yes, sir. That is accurate, and that is across the entire Southwest Border. So 4,000 is a healthy number. So even though we have brought those levels from 19,000 in May, as I talked about earlier, we are still sitting at 12,000 to 13,000 every day, which is well above the capacity level.

Chairman JOHNSON. Again, that is the capacity of the standard stations, correct? You have put up things like PGA tents, we saw those, other types of military tents, the types used by our military in Iraq, that type of thing. Correct? Is that how you have expanded capacity?

Mr. HASTINGS. That is, sir. So, I mean, you have seen, in multiple areas, primarily RGV in El Paso, where we have been forced to move bodies out, transport them out, because we are over capacity in that location. We have transported them to either Del Rio Sector to process or to Laredo Sector to process.

To your point, we have stood up additional soft-sided facilities. We have stood up two at Donna in RGV, and we have stood up one in El Paso as well, to assist, and there is one currently being stood up at Yuma to assist.

Chairman JOHNSON. So talk about the roadblock, because I know Border Patrol, you are trying to process, create the A-file as quickly as possible and then turn them over to ICE. Correct? I mean, that is the process. You apprehend them, develop the—screen them for medical conditions, take them to hospitals, do anything you can to treat them with as much compassion as possible, but your job is really to turn them over to ICE as quickly as possible. Correct?

Mr. HASTINGS. So two things. One, yes, we process the family units and the single adults as quickly as possible, and the job is to turn them over to Enforcement and Removal Operations (ERO) ICE. The UAC, they are our top priority. We process them first, so we can get them entered into the system to be turned over to HHS.

Chairman JOHNSON. So what is the roadblock in terms of why you are so over capacity?

Mr. HASTINGS. So one is sheer volume. The system is overwhelmed, so just sheer volume alone. If you look back, historically, demographically, 70 to 90 percent of who we arrested we could eas-

ily repatriate immediately back to Mexico. Today we are seeing 82 percent of those that we arrest are from other than Mexico, and that population is very difficult to repatriate under the current laws that we have going.

Chairman JOHNSON. So one of the complaints I hear on the border, from Border Patrol, is ICE does not have the capacity, so Border Patrol is saying, "ICE, take these individuals" and ICE is saying, "We do not have the capacity." And then, of course, ICE, particularly the children, go to HHS, and we do not have the capacity either. It is just kind of backing them right up to Border Patrol, right?

Mr. HASTINGS. It is. So I think everyone in the system, the entire system, is overwhelmed right now. That is absolutely correct. We are holding these individuals longer than we want to. We do not want to be holding these individuals for longer than 72 hours. If we could get rid of them quicker than that, that would be great as well. But we do not want to be holding kids in detention facilities, our detention facilities, which were not designed for that. If we had zero in custody that would be great.

Chairman JOHNSON. Yes, again, there is no incentive. You are not trying to hold children longer than 72 hours. You would just like to turn them over to ICE and to HHS as quickly as possible. It is just not possible right now.

Mr. HASTINGS. As I understand it, HHS is at max capacity, as is ICE ERO, and they need additional funding for bed spaces.

Chairman JOHNSON. Mr. Nevano, you talked about a case where a child was purchased for \$84.

Mr. NEVANO. That is correct, Senator.

Chairman JOHNSON. You also listed a number of different stats in terms of how many people had been apprehended, the number of fraudulent families, fraudulent documents, that type of thing.

In the scheme of things, where you are looking at over 400,000 accompanied children, primarily people coming in as family units, one of the things I was trying to get a sense of in this hearing is how prevalent the human trafficking element, the sex trafficking, the involuntary servitude is within this process. You obviously have limited resources in terms of how many things you can investigate. I mean, I have heard statistics in terms of how many crimes are actually ever detected or prosecuted or arrests made.

What is your sense of how prevalent this is? I mean, do you have any sense, whatsoever? Are you as suspicious as I am that there is a lot of this going on?

Mr. NEVANO. Senator, keep in mind that a lot of times you do not need a border nexus to have human trafficking. So a lot of times it is very difficult for our CBP counterparts at the border to actually identify a human trafficking element or crime. Usually the human trafficking element occurs once they make it into the United States, and that is when we are seeing more of the human trafficking element. So a smuggling event starts off at the border, but once the person gets into the interior, as you mentioned in your opening comments, it often turns into a situation of exploitation where that migrant is then charged, held against their will, their families are deported back home to pay more money to pay off their smuggling debt.

Chairman JOHNSON. So let's go back to the process. Border Patrol apprehends, processes, turns over to ICE. ICE then—again, when I was, for example, in El Paso—turns them over to an organization like the Annunciation House, who also helps allocate them to other churches to further care for individuals, but try and identify family members or relatives or some place where they can be sent to. People buy plane tickets, buy bus tickets, and these individuals are sent all over the country. Is that basically what is happening? Again, as rapidly as possible. That is occurring within 6, 7, 8, or 9 days, general.

Mr. HASTINGS. Yes, sir, that is occurring very quickly. In March we began releasing non-criminal, processed families, because we were at 19,000. So we began releasing them, working closely with our NGO partners to provide service for them after release.

Chairman JOHNSON. Now when you say you began releasing, Border Patrol began releasing them, right, bypassing the step with ICE, right into non-government organizations.

Mr. HASTINGS. That is correct, sir. Our capacity levels at 19,000 and climbing, for the safety of our officers, our agents, and for those that we detained, we began releasing.

Chairman JOHNSON. So my final point is, in part of that processing, I think the migrants give you an address where they think they are going to go. Correct?

Mr. HASTINGS. Yes, sir.

Chairman JOHNSON. But once you turn them over to non-government organizations you have no idea where they really go.

Mr. HASTINGS. That is correct. They are provided with a change-of-address form, in case they go someplace else, but where they ultimately go after we release them, or on an order of recognizance, we do not control where they go or how they get there.

Chairman JOHNSON. Again, the assumption is they are going to meet up with some relative? A lot of people have come in during the Central American wars from the 1980s, so there are a lot of people they know, and they have social media. But we still are finding families in stash houses.

Mr. HASTINGS. That is correct. Yes, sir.

Chairman JOHNSON. Senator Peters.

Senator PETERS. Thank you, Mr. Chairman. I know two of our Members, Senator Hassan and Senator Rosen, have a mark-up so I would defer my questioning and defer to Senator Hassan.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you very much, Senator Peters, for the courtesy. Thank you to Chairman Johnson and Ranking Member Peters for this hearing. Thank you to all of our witnesses for being here to testify as well as for your service to our country, and please thank all the men and women you work with on our behalf as well.

We all want to make sure that those of you on the front lines have the resources you need. We also want to make sure that you are doing your jobs consistent with American values, and I think that is something we all share.

Mr. Howe, I wanted to start with a question to you. It would be great if we could have a brief update on drug seizures at our land ports of entry along the U.S.-Mexico border. Have we seen an in-

crease in trafficking of any particular narcotic over the past 6 months?

Mr. HOWE. Thank you, Senator, for the question, and thank you for visiting McAllen in May.

Our narcotics users are on track to match our numbers from last year. Year to date we have seized more than 39,000 pounds of methamphetamine, which is tracking a little bit higher than normal; 38,000 pounds of cocaine; 3,200 pounds of heroin; and nearly 2,000 pounds of fentanyl.

Senator HASSAN. Thank you. In particular, have fentanyl seizures increased or decreased over the past 6 months, and what does that tell you about the drug cartels' plans for the trade of fentanyl?

Mr. HOWE. I think we are seeing less through our mail facilities and is trending up slightly on the Southern Border with the fentanyl.

Senator HASSAN. Right. Of course, while the size of the seizures of fentanyl that you just recounted sounds smaller than the other drugs, 2,000 pounds of fentanyl is an awful lot of fentanyl, given its lethality.

Mr. HOWE. Absolutely.

Senator HASSAN. Mr. Hastings, how do Border Patrol's drug seizure numbers compare with CBP's seizures at ports of entry?

Mr. HASTINGS. Thank you for the question. So we have noticed the hard narcotics generally trending up, and what I mean specifically, cocaine seizures are up, methamphetamine seizures are up, and heroin seizures are up. Cocaine, about 9,700 pounds of cocaine seized so far this fiscal year between the ports of entry.

Senator HASSAN. Right.

Mr. HASTINGS. About 9,800 pounds of methamphetamine seized between the ports of entry. Heroin, 448 pounds of heroin seized so far between the ports of entry. Marijuana is slightly down at about 200,000 pounds, and fentanyl, although down a little bit at 149 pounds, still obviously very highly concerning.

Senator HASSAN. Thank you for the information.

Mr. Hastings, I want to turn to another topic. I understand very clearly, from my visits to the border, the one I just did with Senators Johnson and Peters and the one I did last year, that we are facing a humanitarian and security crisis along the Southwestern Border. I agree with you that we need comprehensive immigration reform in order to help relieve some of the flow of migrants into the United States. However, there is absolutely no excuse for the reported conditions at Border Patrol facilities that house child migrants.

Outside lawyers recently visited a Border Patrol facility in Clint, Texas, where they reported widespread instances of children living in squalor, being denied the ability to shower for weeks at a time, caring for infants just a few years younger than themselves, and being locked in cages for the vast majority of the day.

Similar reports of gross mismanagement and horrible conditions have come to light at the Border Patrol facilities at McAllen and El Paso, as well as a private facility in Homestead, Florida.

I truly understand how overwhelmed Border Patrol is. I think you have done a very good job of highlighting it in your testimony.

I certainly saw a great deal of it when I was down at the border just last month. I also understand that CBP needs funding to address this crisis. Hopefully we will be able to take action here in the Senate on an emergency aid package in the coming days.

However, when dealing with children, your first and foremost priority is to ensure that the children in the Federal Government's custody are treated with the same kind of care, dignity, and support that we would want and expect for any child.

To that end, Mr. Hastings, I would like a very clear answer on these questions. First, does CBP have an obligation to provide toothpaste and soap to children in your custody? Yes or no.

Mr. HASTINGS. We are providing that in El Paso, in Clint Station.

Senator HASSAN. The news reports say otherwise, but you now say you do have an obligation to do that.

Mr. HASTINGS. We have been at the Clint Station, and generally all of our stations across the Southwest Border are provided with a variety of hygiene products. Even though our facilities were not constructed for the demographic we are seeing—

Senator HASSAN. I understand that, and my time is limited so I do understand that you are dealing with difficult facilities. I do understand that there is a backup with HHS, which I think HHS could do more to solve. But at the end of the day, what I am hearing you say is that you agree that children should be provided soap and toothbrush if they are in your custody, which is a different position than what the Administration has been saying in court.

Mr. HASTINGS. We are providing those things now. We have been and we will continue to.

Senator HASSAN. Do you have an obligation to feed, clothe, and clean the children in your custody?

Mr. HASTINGS. We provide three hot meals a day and snacks are unlimited to those in our care.

Senator HASSAN. You do understand that that is in direct contradiction with the news reports that we have been reading, and from what lawyers who have been visiting these children and interviewing them are telling us.

Mr. HASTINGS. I would ask that you understand that those are the plaintiffs' attorneys who have a case against the government.

Senator HASSAN. You should understand that I am a member of the bar of Massachusetts and New Hampshire, and I hold attorneys to very high standards, and I doubt very strongly that any attorney would be fabricating this information.

Mr. HASTINGS. I understand, ma'am.

Senator HASSAN. What steps is the Border Patrol taking right now to ensure that the mismanagement of child migrants in Clint, Texas, is not occurring at every other border patrol facility along the Southern Border?

Mr. HASTINGS. So all of the allegations that you have mentioned above that were made have all been reported to the Office of the Inspector General (OIG) and will be thoroughly investigated. They have also been reported to the Office of Professional Responsibility (OPR) within CBP. They will be thoroughly investigated.

Senator HASSAN. I am pleased that they will be investigated, but my question is what are you actually doing to make sure that as

you are dealing with an unprecedented number of migrant children that you are ensuring that there is enough soap and toothbrushes, that there is enough food and enough time for them to be outside and out of very confined spaces? What I am asking is, what are you operationally doing to change the circumstances?

We are hearing reports, not just from one facility, not just from two facilities, not just from one source, that these children are living in terrible conditions that would violate any standard of any institution that we all would expect in this country. What are you doing to actually make sure that children are getting the care and the sanitary conditions and the food that they need?

Mr. HASTINGS. So we have done a great deal. As I mentioned earlier, we have brought in shower facilities just for this population and for others, due to the new demographic and how long we are holding them. We have increased our medical contract across the Southwest Border for medical assessments and medical care. We have increased, as I mentioned in my oral statement, the amount of operational funding that we are spending on consumables, diapers, food, formula, all of those things.

If you walk into many of our locations on the Southwest Border, including Clint, you will see an area, a storeroom, that frankly looks like Costco, with these supplies that are available, and when agents are providing these supplies they are documenting what they are providing.

So we have those supplies readily available and we are offering and providing those supplies now.

Senator HASSAN. I am over time. I thank the Chairman for his indulgence. There is a huge disconnect between your testimony and between what we are getting as reports from the facilities. I hope very much that we can just focus on making sure the children are clean, well cared for, safe, and released as quickly as possible.

Thank you.

Chairman JOHNSON. Senator Hassan, we will work with you to get those answers. One thing I do know that Border Patrol is doing, for example, in El Paso, instead of 28 Border Patrol agents on the border, 25 are caring for children and families and we have 2 or 3 of them over an 11-mile stretch, and we are taking OFO officers from ports of entry and also putting them on the border.

Senator HASSAN. We saw that at the border. My issue is not with how hard the men and women on the front lines are trying. My issue is what we are doing operationally to change the circumstance on the ground so that these children are well cared for and safe. Thank you.

Chairman JOHNSON. Right. Senator Rosen.

OPENING STATEMENT OF SENATOR ROSEN

Senator ROSEN. Thank you. Thank you, Mr. Chairman. Thank you, Senator Peters, for deferring to our committee, and thank you for the service and work that you all do. It is difficult, it is challenging, and oftentimes heartbreaking, so we do appreciate that.

And like the Chairman said, we all saw that awful and heart-breaking photo of the toddler who drowned while clutching her father's neck. I cannot even begin to imagine, as a mother, what those last moments for that father and daughter were like, and I

believe the mother was on the other side of the river, and I do pray, like the Chairman, that this photo, and what we talk about today, moves this body into action.

So let's talk about the Remain in Mexico policy. According to the State Department's Trafficking in Persons June 2019 report, over the past 5 years we know that human traffickers, as was said, have exploited numerous victims in Mexico. We know the vulnerable groups—women, children. The vast majority of foreign victims are forced into labor, sex trafficking, mostly from countries in the Northern Triangle. They are on their way to the United States.

But against this backdrop, in January 2019, DHS issued a new policy guidance on Migrant Protection Protocols, known as the Remain in Mexico policy. Under this policy, certain asylum-seekers, including families, are sent back to Mexico to wait in that country for the entire duration of their U.S. immigration court proceedings. That could take months; it could take years.

And so we do know that there is a challenge in Federal court, but I am concerned that this policy is going to drive more and more people into the arms of those who wish to exploit them, making the problem worse, and I can tell you that the State Department's own annual report backs me up on this.

So my question to you, and I am hoping that you can provide us the numbers if you do not have them, do you know how many individuals seeking asylum, that DHS has returned to Mexico under the Migrant Protection Policy (MPP)? Any of you?

Mr. HOWE. Thank you, Senator, for the question. I have the numbers for Office of Field Operation, so for the ports of entry we are running MPP in San Diego, and to date we have returned 665; in Calexico, 96; in El Paso, 539. So 1,300.

Senator ROSEN. How many families were arriving as family unit? Excuse me.

Mr. HOWE. I will have to get back to you on that number. I do not have that.

Senator ROSEN. Also, do you know the number of unaccompanied minors?

Mr. HOWE. Minors would not be a part of the program. They are not considered for MPP.

Senator ROSEN. To your knowledge, are these programs—are there plans to expand these policies beyond San Isidro, Calexico, and the El Paso ports of entry?

Mr. HOWE. We are in ongoing discussions internally and with the Mexican authorities on expansion.

Senator ROSEN. So you do not have a timeline for when—

Mr. HOWE. I do not.

Senator ROSEN. You can report back to us when you do?

Mr. HOWE. Yes, ma'am.

Senator ROSEN. Thank you. I also want to say that reports have indicated that DHS has returned to Mexico asylum-seekers who are pregnant or children with neurological disorders. That is despite guidance that clearly states individuals with known medical issues should not be subject to this policy. Have we been investigating these cases? Do you know of any?

Mr. HOWE. I am not aware of the allegations but we generally do not include migrants that have a known physical or mental illness, if there is any criminality, history of violence.

Senator ROSEN. What about pregnant women?

Mr. HOWE. If a migrant is in a long-term pregnancy or there are sensitivities to the pregnancy—

Senator ROSEN. They are all long-term pregnancies. They have an end to the term. We know the term of that.

Mr. HOWE. Yes. They would not be considered.

Senator ROSEN. Thank you. I have a couple of minutes. I want to go back and talk about metering at the ports of entry. Of course, again, CBP, you have a practice of metering, queue management, as you call it, at the ports of entry all along the U.S.-Mexico border, where asylum-seekers are required to wait for indefinite periods for the opportunity just to be processed.

Can you talk to me about why you are employing the process of metering or queue management, and is it happening across all ports of entry?

Mr. HOWE. Thank you, Senator. Yes, it is. It is a discretionary balance used by our port managers to really balance and assess our mission requirements—our counternarcotic, our facilitation of trade and travel, and the processing of migrants, and balancing our resources against that. So putting them in all those different areas, and without focusing them in any one particular area.

Senator ROSEN. So how could we help? As Congress, how can we help you speed up this process so you do not have to manage this queue and you can get through—

Mr. HOWE. I think it is the whole process, Senator. It is our facilities that were not designed to house large groups of individuals, and then ICE ERO is not in a position to be able to take them. So if we did increase and we would be holding them longer, and ERO would have an increased difficulty in finding bed space.

So it is a balance that right now, with ERO and HHS's capacity issues, it is adequate.

Senator ROSEN. So we need to have people talking to each other to increase the flow and the capacity of what we can do, and, of course, to Senator Hassan's point, doing it in a human and kind way.

Can you tell me, too, the numbers, quickly before I end here, how many migrants you are processing at CBP daily?

Mr. HOWE. At our ports of entry?

Senator ROSEN. Yes.

Mr. HOWE. It varies across the Southwest Border, based on that balance, as I mentioned, the discretionary balance of what we are—

Senator ROSEN. Can you give me a rough estimate?

Mr. HOWE. Three hundred.

Senator ROSEN. Do you know how many are currently in line waiting in Mexico?

Mr. HOWE. That is difficult to nail down because those numbers come from the Mexican authorities. But we have been told in each one of the areas roughly 3,000 to 4,000.

Senator ROSEN. And so based on what you know, what do you know to be the average time an asylum-seeker will have to wait?

Mr. HOWE. It has been some time since I have checked with San Diego but what I last heard, a few months ago, was 5 to 6 weeks.

Senator ROSEN. Five to 6 weeks. I hope that, again, we can do something about this, that we can help. I have so many more questions that I will submit for the record about the conditions for children, young families, and we want to be sure that we stop the exploitation because nothing in my mind is more heartbreaking, and I can only imagine when you opened that trailer what it did to you, and the nightmares you probably have remembering that. So I want that to motivate us to do the right things.

Thank you.

Chairman JOHNSON. So, Senator Rosen, because we asked a similar question. I have to respond to get it in the record.

Currently, as of June 16 of this year, 11,575 individuals have been returned to remain in Mexico. 1,109 came from the ports of entry, 10,466 came from Border Patrol. So about 10 percent come through the ports of entry and the rest have come into this country illegally and then they are returned. So again, the total number is 11,575. Senator Peters.

Senator PETERS. Thank you, Mr. Chairman. I want to pick up on those questions of Senator Rosen and the numbers. So is that the number of individuals turned away at the port of entry under the current metering practices? If you can give me a number of that, I just want to clarify that, either Mr. Hastings or Mr. Howe? Yes. How many have been turned away because of the metering process?

Mr. HOWE. That is extremely difficult, if not impossible, to identify the number that are not crossing the boundary line. In many cases, the NGO's are holding them in Mexico or caring for them until there is an opportunity for us to take on more migrants. That is a communication between us, the Mexican authorities, and the NGO. So it is nearly impossible.

Senator PETERS. There are not folks coming across and you are saying, "You cannot come across today because of the metering process?" You are saying you do not know that number?

Mr. HOWE. We do not.

Senator PETERS. Obviously the tragic situation we have all talked about, with this father and his young daughter, the story is that he died after attempting to seek asylum at a port of entry and he waited for over 2 months in Mexico. To both Mr. Hastings and Mr. Howe, what do you think is the relationship between the metering at the ports of entry and an increase in families that we are seeing that are trying to cross between ports of entry?

Mr. HASTINGS. Sir, I just know that—I mean, we have seen an increase in the volume of family units continue to build month after month. I am not sure what the result is with the queue management. When we are interviewing these individuals, quite frankly, what they are telling us is "we have heard on social media or we have heard from folks who are already in the country, bring a child and you will be set free." I mean, that is what we are hearing.

Senator PETERS. That is not my question. My question is what is the relationship? You are metering folks that are coming across the port of entry, so they cannot. We know this gentleman, who tragically died with his daughter, was waiting 2 months and said

was turned away from the metering, and so then decided to go not in a port of entry—and we are seeing more and more folks. What is the relationship of people who, if they cannot come through a port of entry they are now trying to cross at other places on the border?

Mr. HOWE. I think it is difficult for me to speculate, Senator, what numbers that occur. I mean, as I said to Senator Rosen, it is that delicate balance of managing our resources at all our different mission sets and processing migrants is important, but if we were to process more migrants it is going to have to come from something. It is not going to come from our counternarcotic mission. It is not going to come from our international security initiative. So it would have from facilitation. We do not want to have U.S. citizens waiting longer to return to the United States. So that balance is what we are trying to strike.

Senator PETERS. We are discussing, also, trafficking and smugglers and the problem related to that. Does it make sense that if it is more difficult to come across a port of entry and just present yourself at a port of entry to the legal process, and then you want to go then, or attempt to get into the country a different way? That might actually increase the business for smugglers and cartels who will say, "We will take care of the situation for you. Just pay us and we will get you in some other way." Is there a correlation there? Is there or not?

Mr. HOWE. Again, I think it is difficult to speculate. We do have smuggling attempts that occur at our ports of entry. We have over 400 a year across the Southwest Border, where migrants are either presenting somebody else's documents or they are hidden in a vehicle. So it is difficult for me to know.

Senator PETERS. Is there anything being done at the Mexican border to ensure the migrants who are waiting to cross are not being recruited by smugglers at the border, that are being approached to use their services? Are either we or the Mexican government engaged in attempting to disrupt that kind of business connection?

Mr. HOWE. I do not have first-hand knowledge of that but the Mexican authorities would have that responsibility.

Senator PETERS. Would we want to know what the Mexican authorities are doing, and wouldn't we encourage them to do something along those lines?

Mr. HOWE. Absolutely.

Senator PETERS. Why has that not been done?

Mr. HOWE. I am sure it has been done at the local level.

Senator PETERS. Can we find out? Is it possible to get that information?

Mr. HOWE. Absolutely.

Senator PETERS. I would appreciate that.

CBP has said that between mid-April and June 14, over 1,800 family units were interviewed who presented indications of fraud, with 275 fraudulent families identified, as based on the data that I have. Chief Hastings, how many total migrants crossed the Southern Border during that timeframe? I believe it was roughly over 200,000. Is that accurate?

Mr. HASTINGS. Sir, what was the timeframe again? I am sorry.

Senator PETERS. Mid-April to June 14, so 2 months.

Mr. HASTINGS. April to June? So we have had a high volume, I think 132,000 last month. I can tell you, for the year, that we have had 5,100 fraudulent claims so far, fraudulent family claims that we know of.

Senator PETERS. What timeframe is that?

Mr. HASTINGS. That is for the fiscal year.

Senator PETERS. Oh, fiscal year. Yes, I am looking at a 2-month period here.

Mr. HASTINGS. I do not have that specific information but I think the biggest thing, and one of the most important things is you heard Chief Rodolfo Karisch testify last time, it is due to the volume that we are seeing. It is very difficult to spend time interviewing and getting in-depth with these individuals.

Senator PETERS. So my question also is, what do you consider—how do you define a fraudulent family? Is a grandmother and a grandson considered a fraudulent family? Or is an aunt or nephew, an adult sibling of a minor sibling? What is a fraudulent family?

Mr. HASTINGS. So by Trafficking Victims Protection Reauthorization Act (TVPRA) definition it is a parent or a legal guardian or one that is less than 18 years old.

Senator PETERS. A parent or legal guardian. So a grandmother bringing a grandson would be a fraudulent family.

Mr. HASTINGS. It is not necessarily counted as fraudulent. They are just not a family unit. They will be—in other words—

Senator PETERS. So it would show a non-family unit as coming across. A grandmother with her grandson or granddaughter would be considered not a family unit—

Mr. HASTINGS. That is correct.

Senator PETERS [continuing]. Based on your definition.

Mr. HASTINGS. Yes, sir.

Senator PETERS. Could you give some examples of the indicators that you would use to warrant them being interviewed as a possible fraudulent family?

Mr. HASTINGS. A lot of times we will see just the sheer reaction between the child and the adult. The agents will see that and notice that, and they will start questioning further to try to determine if, indeed, it looks like there is true familial relationship. We also saw quite a bit of false documentation, specifically from Honduras and Guatemala as well, birth certificates.

Senator PETERS. Could you also describe the way the CBP officers identified the migrants that participated specifically in the DNA pilot double helix? These were not random sample of families. Is that correct, that these are folks that agents suspected as unlikely to be with a parent before you did the DNA testing?

Mr. NEVANO. Thank you for your question, Senator. We sent a team down to McAllen and El Paso, Texas, and the referrals were given to us after Border Patrol had an opportunity to interview those individuals. If there were individuals that they had been suspected of being in a fraudulent family unit they would refer it to the team that was down there to conduct the DNA testing. This was after interviews, a review of their documents, and as my colleague stated, if the behaviors did not appear to be in a familial relationship, where there seemed to be some distance between

them, they used those factors to refer that family unit over for a DNA test.

Senator PETERS. I am out of time, Mr. Chairman, but just one last question. Do you have an after-action report that you could share with Congress to assess the viability of implementing DNA testing on a wider scale?

Mr. NEVANO. Senator, we did do an after-action report and we will see about allowing you to see that report.

Senator PETERS. I would appreciate it if you could get that to me. Thank you, Mr. Chairman.

Chairman JOHNSON. A couple of points. Those DNA tests are about \$200 a test. If we had 150,000 family units that is about \$30 million to do DNA testing. Also, according to the chart,¹ 93 percent of the family units and UACs have crossed between the ports of entry; 7 percent, 30,000 of those have come through the ports of entry. I mean, the vast volume really is coming illegally between the ports of entry, because that is the easier ticket in.

So I understand the point you are making but I think it is just so widely known that the way to cross is coming across illegally, because within 6, 7, 8 days you will be set free. Senator Scott.

OPENING STATEMENT OF SENATOR SCOTT

Senator SCOTT. Thank you, Chief, for being here, and thank you for what you are doing. I am disgusted with how Congress has handled all that. I mean, you could not make this up. We know we want a secure border. Then people want to complain that you are not doing your job. I think it is disgusting what people are doing.

So Mr. Hastings, what do you need Congress to do to allow you to do the job you were actually hired to do, rather than the job you are having to do today because Congress has not acted?

Mr. HASTINGS. Thank you for the question, sir. So as I said in my opening, first and foremost, short-term, we need additional funding for the supplemental, as do our partners, because, as I mentioned again, the volume of what we have in our custody right now, that 13,000 is primarily unaccompanied alien children, approximately 1,000 today, and then in addition to that it is single adults that we have in custody as well. So HHS and ERO need funding for bed space to get those out of Border Patrol custody and into the care of those who are set up for long-term detention. That is short-term.

Long-term, we need a fix that quits allowing this draw for family units and unaccompanied alien children to come to the United States. We have to stop this draw.

Senator SCOTT. Mr. Howe.

Mr. HOWE. I agree. Thank you, Senator. I agree with everything that Chief Hastings said, but in addition, just to underscore the importance of ICE ERO to get the proper funding and bed space and HHS so that they can relieve our facilities that were not designed for the long-term detention, so we are not in that situation.

Senator SCOTT. OK. Do either of you believe we need to have more border protection? I mean, so far you have talked about supplemental, and the *Flores* decision, primarily, so what about—do

¹The chart referenced by Senator Johnson appears in the Appendix on page 322.

we need any funding to secure the border? I mean, this would not be happening if we had a secure border.

Mr. HASTINGS. Right now I think we absolutely need more funding for border security, but our biggest issue now is pulling away from that 40 to 60 percent of agents that we are pulling off the line to deal with the humanitarian crisis, the families, and the UACs. That is the biggest problem that we have right now, and in the meantime, while we are dealing with that demographic, a large number of single adults are still trying to evade arrest, to your point. A large dynamic of drugs as well, trying to evade. They are using these family units who are trying to cross as a diversion tactic, in a lot of cases, to be able to make money on drugs and single adults trying to evade arrest.

Senator SCOTT. Mr. Nevano, would you like to add anything?

Mr. NEVANO. Sure. Thank you for your question. We are the investigative arm of the Department of Homeland Security, and the concern that we would have is the more resources we take away from conducting the complex criminal investigation, targeting the transnational criminal organizations that are actually organizing these smuggling loads and human trafficking by putting people on the border to augment the need that CBP has taken away, potentially, from conducting our mission, which is, protecting the homeland via investigations and trying to target these transnational criminal organizations.

Senator SCOTT. Mr. Hastings, how does it make you feel when you get asked questions to suggest that you or your team does not care about these children that you are taking care of? How do you all feel every day when you get up and you read the papers or see the news where somebody suggests that you are not doing your job?

Mr. HASTINGS. So it is disgusting to me and it is hurtful to me because daily, I see our agents doing just the opposite. Yesterday I saw our agents in Carrizo Springs jump out of the water, save a 13-year-old child who was unconscious, give him Cardiopulmonary resuscitation (CPR), give him mouth-to-mouth, and essentially bring him back to life. That happened yesterday on our border and that happens quite often, time and time again. Our men and women are out there risking their lives every day to save those migrants that are either put into a bad position by smugglers or put themselves into a bad position.

So above and beyond that, our agents go to the maximum to care for these children. You have seen pictures, as well, of our agents holding these children, trying to comfort them. So it is very hurtful for us, for our agents who are out there trying to do the best they can at securing our border and dealing with this humanitarian crisis.

Senator SCOTT. How has it impacted your ability to recruit and retain your team to do this job?

Mr. HASTINGS. So our workforce is doing well right now but they want to see a light at the end of the tunnel, quite frankly, to be able to go back to their primary national security mission, and that is what we are hopeful for, that we go back to a primarily national security mission and we see legislative changes that allow us to do

that, that quit the draw for the family units and the unaccompanied alien children.

Senator SCOTT. So do you have concerns when you do your job every day that because of how much time you are having to spend because Congress will not act that we have individuals that are crossing the border that want to harm Americans?

Mr. HASTINGS. I am concerned with that. I am concerned with recruiting individuals in this current state that we are in right now, recruiting good agents to do this in the future, and I am worried when we are diverted by the humanitarian crisis what is coming through our border.

The best example I could give is about 2 months ago we had a large group come across in Rio Grande Valley. This was broad daylight. At the same time we had 791 pounds of cocaine a mile away, cross the border in broad daylight. That tells me that there is very little fear in the minds of the smuggling organizations and the narcotics traffickers because they know we are tied up with other things, humanitarian mission.

Senator SCOTT. Anybody else?

Mr. NEVANO. Senator, I have been around for almost three decades and I have been used to this, via my career, but I would like to put it in perspective. Can you imagine a new agent that has just come on, that just went out and had a very successful day. They seize enough fentanyl that could kill hundreds and millions of people, or they arrested a potential terrorist suspect, or a gang member, or they rescued a child from an exploitation.

They get home and they turn on the nightly news, and there is information on the news saying abolish certain agencies. Can you imagine how that agent feels? I know, personally, when I come home I do not even want to watch that because it is very hurtful, as my colleague stated. So it is very hurtful, and the men and women of ICE, HSI, ERO are out there every day trying to make this country safe.

Mr. HOWE. I will just add, Senator, it is an unnecessary distraction. Our officers want to be mission-focused. They want to be doing what they were hired to do, enforcing our laws and facilitating lawful trade and travel. We do not want to be distracted with processing migrants to the numbers we are.

Senator SCOTT. I have been here 6 months. I am disgusted that we sit here, and you watch on the news, people who are trying to do their jobs are getting attacked and Congress sits here and does not do their job. It is the most disgusting thing I have ever seen in my entire career, my business career. You would not do this in your business career. Thank you.

Chairman JOHNSON. Senator Hawley.

OPENING STATEMENT OF SENATOR HAWLEY

Senator HAWLEY. Thank you, Mr. Chairman. Can I just agree with what Senator Scott just said? I mean, the behavior of this Congress is absolutely pathetic. I mean, it is just pathetic. People up here should be apologizing to you for the total dereliction of duty that this Congress has undertaken. I have never seen anything like it in my life. This is, by my count, the sixth hearing, full hearing, I have sat through in 4 months on the border, which is

great. I am glad we are paying some attention to it. The problem is this Congress never does anything. This Congress refuses to do anything. We know what the facts are. You have outlined them again today. CBP is over capacity, underfunded, undermanned. ICE, over capacity, underfunded. HHS, over capacity, underfunded. Yet this Congress will do nothing.

Meanwhile, the cartels and the smuggling rings, what are they doing? They are lying to vulnerable families, exploiting children in order to turn profits and abuse our broken asylum system. We know it needs to happen. We know we need to reform the asylum system. We know we have to stop the pull factors, as well as address the push factors. We know all that, but this Congress will not do anything.

This morning I have heard, just from my colleagues across the aisle this morning I have heard statements like, "I am heartbroken," "No one is more vulnerable than a child," "The status quo is unacceptable, it is unsustainable," but yet we do not do anything to change it. There is no will to change it. Children are being exploited.

This morning we woke up to the picture of the man from El Salvador and his young daughter dead, face-down in the water. Why? Because they were exploited. Who knows how much that poor gentleman paid to some smuggling ring who told him that if he just came to the United States, to our border, and claimed asylum he would automatically get in. That was a lie. Who knows what lies he was told? And here he ends up, he and his little baby, dead, and this Congress still refuses to act.

It is absolutely unconscionable. We know what needs to be done. Nobody will do it. My view is we can talk and talk and talk, but until this Congress is willing to take some action—I am sorry for what it is you have to deal with. I am sorry that this Congress has left you without the resources you need. I am sorry that this Congress has not done its duty. I am sorry that this Congress has left not only our Southern Border exposed and vulnerable but has left children exploited, day after day after day. And until this wretched Congress decides to do something I do not know why we even bother to have these hearings. I do not know why it even matters, because this Congress will not act. This Congress refuses to act, and it is a complete dereliction of duty.

So thank you, gentlemen, for your service. Thank you for what you are doing. I would just say to the President, I would encourage the President to take every action that he possibly can, within the bounds of the law, to address this crisis and secure the border, because it is clear to me that this Congress will not act in any meaningful way. And so long as this Congress refuses to act, the President needs to act. I would urge him and urge the Administration to do everything within their lawful authority to address this crisis, because this Congress is not going to.

Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Hawley, you missed the opening, when I described the process that this Committee is going to undertake. Obviously the reason we hold these hearings it is a problem-solving process to lay out the reality. And so what I proposed, in talking to Senator Peters, and hopefully we can do this, is in as

nonpartisan and uninflamed way as possible, but sit down at those tables, like we did last week, where we passed the End Government Shutdown Act, a smaller problem but one that, I think that legislation solves, Senator Lankford's legislation, Senator Hassan's legislation, but start working through this problem in a very organized fashion, have open meetings where we discuss these things, and we talk about what do we need to do? I come from a manufacturing background, continuous improvement—what can we do to start the process?

Senator Peters is working right now with me, other Members, on the letter of support of Operation Safe Return, a pilot program where we can gather information, where we can surge resources to—I am not going to repeat it. But, we are working on that.

But I am hoping that you will participate, and I hope every Member of this Committee will participate in this process, a number of meetings, hours long, where we thoroughly discuss these problems, the different elements of the problem, and start coming up with solutions. Again, I do not know if that ends up in a complete piece of legislation or in those discussions, in an organized fashion, we come up with different elements that can be tacked onto a piece of legislation.

So again, this place does not work. It does not have much of a problem-solving capacity. That is a frustration, Senator Scott, that you are certainly relaying. We all experience it. And so we are going to do something different, do something paradigm-shifting. Again, whether we do accomplish something or not, at least we have had a very, hopefully a thorough discussion.

Senator Scott, did you want to—

Senator SCOTT. I do not believe any of it. I sit here and preside. I sit here and preside this week and I hear people, Democrats, get up there, and all they do is complain about these people. They do not come up there and say, "We ought to fix the *Flores* decision." They do not come up there and say, "We ought to secure the border." All they do is try to embarrass these individuals sitting here. It is disgusting what they are doing.

I watched it yesterday presiding, that somebody did it, for 15 minutes, just sit there and lambast them about what they are doing. I mean, what—Mr. Hastings, how many people have you ever worked with that, "I do not care about children? I want to do the wrong thing today."

Mr. HASTINGS. Just the opposite. I have seen agents, on their own, go out and purchase toys, bring them in for the children to play with. I have personally stopped by and bought meals for those that I had arrested. I have seen agents do the same thing. I have seen agents give up their lunches so people can eat. I mean, I have seen the humane professionalism and outstanding work by our agents since I have been in this agency, and long before that.

Chairman JOHNSON. So Senator Scott—

Senator SCOTT. Do you know what they are doing today? The people that are going down to debate are going to the Homestead facility just to make news, not to solve a problem. They are not going to appear to solve a problem. They are appearing—how do I make some news?

Chairman JOHNSON. I fully understand that. I am as frustrated as you are with the process. I am hoping this Committee will be different. I am hoping this process will be different.

So engage in it. Let's give everybody a chance.

So let us get around the table like we did last week and let's see what we can make of this. I mean, again, you have to be tenacious. We have to start moving the football forward, or we can throw up our hands and say we will never fix this problem. I am saying that photograph ought to catalyze us and we ought to try something different and start trying to solve the problem, OK? Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. So I want to join my colleagues in the frustration of this day. I think what we are experiencing today is some pent-up, abject, total frustration. March 28th of this year, at that time Secretary of DHS came to this hearing, and then followed up with a letter, and this was the exact quote from her: "We now face a system-wide meltdown. DHS facilities are overflowing. Agents and officers are stretched too thin, and the magnitude of arriving and detained aliens has increased the risk of life-threatening incidents."

Then she said: "My greatest concern is for the children who are put at high risk by this emergency, who are arriving sicker than ever before after traveling on the treacherous trek." But instead of actually providing funding during that time period, this Congress delayed and did not provide the funding, did not engage, did not try to solve it.

That same secretary, over and over and over again, said none of this gets better until the *Flores* agreement is settled. I have had personal conversations with Democrat and Republican Members on this Committee and said at what point do we finally admit the obvious statement that the Obama Administration made, that the Trump administration made, that if we do not resolve the *Flores* settlement none of this ever gets better because traffickers will continue to move children across our border.

The children are currently being used as pawns now on the border, to try to hurt the Trump administration. My Democratic colleagues are trying to identify children that are not getting care at the same time slowing down the process of getting humanitarian aid to try to hurt this Presidential election.

These kids are not pawns, and the Administration has said for month after month after month, we need additional humanitarian assistance. But here is what has happened. Nothing happened after that meeting in March. On May 1st, HHS sent us a protracted letter to try to get additional assistance and saying that we are at a crisis moment. On May 17th, they contacted us again and said we are a critical moment. Secretary Alex Azar, from HHS, came back and said, in that same time period, we are at a critical moment.

We tried to move a humanitarian relief package with the disaster relief package on May 22, and Leader Schumer came to the floor and made this statement: "The Democrats are ready to pass the bi-partisan disaster relief package that has already been agreed to

and written but we should pass disaster agreement as is and return to unrelated issues at a later date." "Unrelated issues" is this humanitarian issue. To say these unrelated issues are slowing our disaster work so we will put the humanitarian work off until later. And then yesterday Senator Schumer was back on the floor, criticizing the President and criticizing all of these folks and their agencies, saying why aren't you taking better care of the kids? When this Committee has talked about it for months, you all have asked for it for months, and all we have gotten to is we will get to unrelated issues later.

Now, I am tired of people calling my office and saying, "How come you do not care about the kids?" I am sure you are tired of reading it in the media every day, "How come you do not care about the kids?"

If 500 people showed up at your house tomorrow and said, "I am going to stay here for a week," would your house be ready to take 500 people? What would you do if 500 people came to your house tomorrow and said, "I need to stay here?" You all are having to manage thousands of people showing up at facilities that are not prepared for thousands of people, that never have been, and that are certainly not set up for kids, and the whole time we argue about what are we going to do when everyone knows the issue. It is the *Flores* settlement. Every smuggler uses that, and we will not acknowledge it, and there has been a dramatic slowdown on trying to actually get humanitarian aid.

Now the Senate comes to an agreement, finally, on a humanitarian aid, and the House response with a solely partisan bill, and says, "No, we are going to try to do a partisan bill," and then the conversation this week was, "We may not get to the humanitarian bill this week, if we do not get a certain vote want on the National Defense Authorization Act (NDAA). As Democrats, we may hold off the humanitarian bill and NDAA for 2 weeks from now." Yet another delay because it is an unrelated bill.

So I do not know if we get the humanitarian vote again this week, because Democratic leadership is postponing, again, while going to the floor, and saying, "Why isn't the Trump administration doing more about this?" You cannot have it both ways. This is not about hurting the President and his Presidential election hopes for next year. This is about a group of kids that we need to reduce the incentive for them to be able to come illegally across our border, and we need to take care of the folks that are already here. This is not that hard. But it has become this horrible partisan issue that I think all of us are really frustrated with, to say this has been discussed to death. We have to be able to act on this.

So I want to ask just a couple of stats. How many folks are coming across as males at this point and claiming to be 17 years old? Is there a disproportionate amount of males crossing the border and saying "I am 17?"

Mr. HASTINGS. Sir, I do not have the exact numbers but I can tell you that we are seeing a higher number of families with fathers as they are the primary parent that is coming across. So we are seeing an increase in fathers with children. I do not have the exact numbers with me.

Senator LANKFORD. How many countries have you seen crossing our border with minors?

Mr. HASTINGS. So 140 different countries that we have seen apprehensions, that we have made, from 140 countries, 52 countries for family units. So we have family units from 52 different countries that have crossed into the United States this fiscal year.

Senator LANKFORD. And that is just this fiscal year, so that would be since October 1 of last year.

Mr. HASTINGS. That is correct, sir.

Senator LANKFORD. Eighty-two percent of the people, you testified, of people that are crossing the border, are coming from countries other than Mexico, at this point. Is that correct?

Mr. HASTINGS. That is correct, sir.

Senator LANKFORD. Guatemalan authorities that I met with this week have stated that DHS has worked very hard with them, and that Guatemalan authorities are continuing to be able to work because, quite frankly, the Guatemalan authorities do not want those kids also making this trek and they are trying to do what they can to be able to slow down the flow from their side as well. They were very appreciative of the work that DHS has done to be able to partner with Guatemala, specifically.

Now I am sure if I talked to the Honduran authorities, and the El Salvadoran authorities, they would say the same. But the Guatemalan authorities, this week, were very grateful to our government and the work that they are doing to be able to help not only protect those kids but, quite frankly, they want their kids back home, to be able to be there, and they are a little frustrated by this whole journey as well.

As a country, we have put hundreds of millions of dollars into Central America, into the Northern Triangle for quite a while, to help stabilize those governments, and continue to be able to do that, to be able to provide a safe place that is there.

So all of this conversation about we are doing nothing to be able to help the issues there really is we are doing a lot of things to be able to help the issues in Central America. What is not being done is dealing with the pull factors here, in the *Flores* settlement, and frustratingly enough, also not the humanitarian assistance.

With that I yield back.

Chairman JOHNSON. Senator Portman.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Mr. Chairman. I was here earlier and had the opportunity to hear you, Mr. Hastings, and hear some of the discussion with my colleagues, Senator Johnson, in particular, on what is going on at the border and also from Senator Peters. I think there is now a consensus—I certainly hope so—that we are facing a crisis. It is an immigration crisis. It is also, by the way, a drug crisis, impacting my home State of Ohio and every State represented on this dais. Crystal meth is now coming in in unprecedented numbers, as an example. We already knew that heroin was coming in. Crystal meth is coming in entirely from the Mexican border now, we are told.

It is also a humanitarian crisis. There is no question about it. The men and women who you represent are being put in an impos-

sible position, and I hope that every member of this body protects the right of American law enforcement to do their job. It is a tough job, but I think you are doing it in a professional way, and I know it is difficult.

I guess what I would like to focus on is solutions. I do think there are some potentially bipartisan solutions, and I want to hear from you on them. One that has always struck me as a reasonable approach that we should be taking, which we have done during the Obama Administration, is to have people apply from their home country. They would apply, technically, as refugees from their home country because you claim asylum when you come into the United States. The criteria are the same. The criteria that have to be met are the same that are eventually adjudicated over here. We are finding about 15 percent of those who apply for asylum actually receive asylum. That number, may not be entirely accurate going forward, but the point is most people who are applying are not receiving it. Why? Because they are deemed, through our judicial system, to be economic refugees, probably, and not meeting the criteria.

But what if we set up a system, as was done, again, in the Obama Administration, where people, instead of being told by the traffickers you have to come on this arduous journey, and we are going to mortgage your house for you, and we are going to take your paycheck for the next half year, and we are going to take your kids because if you are a kid, under the *Flores* decision, then you cannot be held in detention for more than 20 days. Instead, the traffickers had to say, "You have to apply here. You have to apply from country."

Now two things would have to happen. One, we would have to raise the cap on refugees, which has been lowered during this Administration, and that should be acknowledged. It would require, specifically, a cap to be raised for Central American countries.

Second, we would have to provide the resources, although, as you know, with refugee resettlement, primarily that is done through international bodies, including the United Nation (UN) refugee resettlement operations. So this is something that could be internationalized.

I have talked to a number of my colleagues on the Democratic side of the aisle about this. They have not said no. It certainly makes sense, as part of an overall strategy, in my view. The pull factor is the fact that you can misuse our asylum system now. It is also the fact that you can get a job here in America and make 10 to 20 times more than you can make in your home country. If I was in that situation, or you were, you would be tempted to do the same thing. It does not make it right.

One way to do this is to have people, instead of being told you have to make this journey up north is to say you have to apply right here. And let's adjudicate these cases. Let us provide the funding for it. Let us use the United Nations and other international bodies. That reduces the flow in a substantial way.

I just wondered if any of you, Assistant Director Nevano, you may have some thoughts on this, Mr. Howe, Mr. Hastings, if you had any thoughts on this idea of going back to a system where people apply from their home country.

Mr. NEVANO. Thank you for your question. I am not as versed in that area, but the argument that you make seems to make sense. I am familiar, back in my younger career, I actually did process refugees, and a lot of Vietnamese, Russians back in the early 1990s, and it was an effective system that worked. So I could see the merits of that system and look forward to working Congress, working with our partners if that is something that is decided to try that out and see if it something that can help stop this crisis.

Senator PORTMAN. Yes, and I know you are familiar with this, but the criteria you use to determine whether somebody was eligible for refugee status is the same criteria we used for the asylum status.

Mr. NEVANO. Yes. It is just a difference of the section of law. I believe it is Section 207 of the Immigration and Nationality Act (INA) and Section 208 of the INA is the difference, but the statutes are very similar, like you mentioned, whether they apply here in the United States or apply outside of the United States.

Senator PORTMAN. There is also a requirement, should somebody receive refugee status, that there is assistance provided. Usually it is through a private sector entity, but the Federal Government plays a role. Refugee resettlement we are all familiar with. So it is a little different process but it keeps people from coming up to this border. It keeps the numbers we see here, hundreds a day, thousands a week, hundreds of thousands a month, from coming up to our border. Instead, they are told if you want to apply for this status you have to do it back home.

Mr. Howe, Mr. Hastings, any thought on this—is this common sense?

Mr. HOWE. Senator, I am very intrigued by it. I think, yes, this is probably common sense. It reduces the pull factors. We will let our lawyers work out the details, but if it can be done, if it has been done before, and working with the State Department, and our international partners, it just makes sense.

Senator PORTMAN. Mr. Hastings.

Mr. HASTINGS. Thank you, sir. I would welcome anything that allows our Border Patrol agents to get back to their primary mission of securing our borders and reduces the flow.

Senator PORTMAN. Yes. Your testimony earlier was striking to me, when you talked about the fact that 40 to 60 percent of your people have been pulled off their jobs, essentially, to deal with the humanitarian crisis. I understand why they are doing it, and they have to do it. We want to be sure that we are providing the emergency care that so many of these migrants need. But that is not their job.

And that leads me to my final question, which is about the drug issue. When the Border Patrol is not on the border trying to detect and stop these illegal drugs from coming into our country that are killing the people I represent, that creates a whole other crisis. It is not on the border; it is in Ohio. It is in every State represented on this dais. And maybe, Mr. Nevano, you can talk a little about these transnational trafficking groups that are smuggling people but also smuggling drugs at the same time. What can we do better to be able to detect and stop this poison from coming into our coun-

try? Crystal meth—back in the day we had meth labs in our States, people made meth in their basements or their homes, and environmental problems with that, obviously, in addition to this poison being made that was harming our communities. We do not see that anymore. Why? Because the crystal meth from Mexico, pure crystal meth, is so cheap and so powerful. I am told by law enforcement in Columbus, Ohio, it is less expensive than buying marijuana on the streets now. And it is killing people.

So, Mr. Nevano, what can we do to stop some of these drugs from coming in, and how are they related to these transnational gangs that also get involved with trafficking people?

Mr. NEVANO. I had the opportunity to testify before your Committee before about the opioid addiction in the United States, and I know you are very well aware that we initiated a Border Enforcement Security Team (BEST) in the State of Ohio, and I know you were present for. That is a recent occurrence that we are trying to stop the opioid flow into the State of Ohio.

But our Border Enforcement Security Teams, we have 65 of them across the country, and those teams are crucial because it takes resources from State, local, and Federal authorities to attack a problem, and the more Border Enforcement Security Teams that we have to tackle the drug problem, I think the better we can identify it.

Also, too, continue our capacity-building overseas. We have trained what we call Transnational Criminal Investigative Units (TCIU). We have 16 of those stationed all across the country, and all over the world, and those individuals are dedicated and are eyes and ears overseas to help provide us the intelligence, the information, and execute the laws that we do not have the authority to do so in the Central America area, in Mexico, and the drug-producing countries. So we rely very heavily on our trained partners and our Transnational Criminal Investigative Units.

Senator PORTMAN. Thank you for your service. Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks very much. Normally we just ask questions of our witnesses. I am going to use this as a chance to have a colloquy with two of my colleagues who I have a lot of high regard and affection for. I might ask you questions but I may not.

But it seems peculiar to me, as I was putting together a congressional delegation earlier this year, and we looked at the flow of folks coming here from Mexico over the last, I do not know, 15 or 20 years. As you know, there are more Mexicans going back into Mexico these days than there are Mexicans coming into the United States.

And getting ready for our CODEL we looked at illegal immigration numbers through the end of last October, and this was about maybe the very beginning of this year. But we looked at immigration numbers through the end of October. My recollection was that in the previous 15 years, illegal immigration from Honduras, Guatemala, and El Salvador had dropped by—actually, illegal immigration across our Southern Border, over this last 15 years, through

the end of October, it was down by just a little over 80 percent. I was almost ready to declare victory.

In the months since then, 5, 6 months since then—actually, 7, 8 months since then—we have seen this surge, this incredible surge of illegal immigration from Honduras, Guatemala, and El Salvador. What has happened with Mexico? Pretty much the same. When I say “pretty much,” it has been pretty much what it has been for years. They are not surging from Mexico. There are still, I am told, more Mexicans going back into Mexico than there are Mexican Americans coming into the United States.

Why is it these three countries, but we are not seeing this kind of surge from Mexico? They have property there, they have crime there, and so forth. Why aren’t they coming?

There is a great need for leadership on this issue, and I think it has to come from this Committee. I have heard the Chairman say, any number of times, this Committee has a great record, history of bipartisanship, and frankly, I think this Committee attracts people who like to get things done, work across the aisle, and look to build consensus. We really see an opportunity here. It is a very sad situation but we also see an opportunity to fix it.

I would like for us to be the committee that provides that kind of leadership. I am not interested in pointing blame. I could easily say, in response to some of our colleagues at this point that this Administration, point out all of their sins. I am not going to do that. But let’s see what we can do to fix this problem. I want to sign up to do that. And, see, I look at the four of us and if the four of us cannot work this out, nobody can. I mean, this is just ripe for our working on it.

Do you all have anything else you want to say with that spirit that I have just tried to kindle here? Anything you want to say in response to that? First of all, I just thank you all for what you do with your lives. When I was Chairman of this Committee I used to go to the floor every month and talk about different units of the Department of Homeland Security and praise the men and women for the work that they do. The Chairman and I were just out there for the opening of the new Department of Homeland Security at St. Elizabeth’s. It was a very exciting day.

But just in the spirit of what I have just said, I would like for you guys to say something.

Mr. HOWE. Thank you, Senator, for what you said and your commitment to work together, to work out legislation or whatever needs to be done to address the crisis. The men and women on the border work hard, they are proud of what they do, and let’s mission-focus them on what they need to do.

Senator CARPER. Alright. Thanks. Anybody else want to say something?

Mr. HASTINGS. Sir, I appreciate it, and again, for the men and women of the Border Patrol we would just ask to work on the legislative fixes, please, to allow them to get back to doing their primary mission.

Senator CARPER. Mr. Nevano.

Mr. NEVANO. I would reiterate what my colleague said. Thank you for addressing the issue, whatever you can do to help us out. Again, we want to focus on the transnational criminal organiza-

tions and focus on the large criminal networks that are actually exploiting these individuals. Whatever you can do to make us get back to doing that type of work and less dealing with the border crisis, we would greatly appreciate it. Thank you very much for bringing that up.

Senator CARPER. The Chairman and I have oftentimes said, in this room, that we have to focus on root causes. It is pull factors and push factors. Some of the situations we have seen in visits down to Honduras, Guatemala, and El Salvador, if we were living down there we would want to get our kids and our families out of there too. Somehow it has gotten a lot easier.

People used to have to walk 1,500 miles, in all kinds of bad weather and danger and so forth. They still do it but now they can get in a bus and come on up, an air-conditioned bus, and get dropped off at the border, and a lot of people are doing it. The coyotes, the folks that are running these operations, they are very entrepreneurial. They can find all kinds of ways to make money, including on the bus service business. We have to be smart enough to figure out how to shut down. We cannot do it by ourselves, which the Mexicans—if we are ever going to get this United States-Mexico-Canada Agreement (USMCA) confirmed, I am not going to say that should be one of the conditions, that they work with us to shut down those buses. That would be part of it. There are all kinds of things we could do.

The other thing I would say is, we have been working now for about 3 years on Alliance for Prosperity, as you know, and it is not the whole answer. It is part of the answer. I like to say there is no silver bullet. There are a lot of silver BBs and some are bigger than others. I think one of the big BBs is making sure that we address the root causes of why people are trying to get up here—lack of economic opportunity, and crime and violence and corruption. What we are trying to do with the Alliance for Prosperity is to address all three of those.

Sadly, when we look at the supplemental—and the President has cutoff that funding to the Alliance for Prosperity, suspended it. When we look at the legislation, the supplemental focuses on the border and illegal immigration, we do not restore it, which I think is a mistake. So we have to be able to—I would like to say walk and chew gum at the same time. We have to address those root causes and we have to address the pull factors as well. I would sign up for doing that, and I suspect my colleagues to my left would do so as well. Thank you.

Chairman JOHNSON. First of all, Senator Carper, let me say I appreciate your willingness to participate in this process, and it is going to be a different kind of process. It is going to take advantage of, I think, the nonpartisan attitude by so many Members of this Committee. We have spent more than 30 hearings gathering information, trying to define the many root causes of this problem. I continue to say the primary root cause is America's insatiable demand for drugs, which has given rise to drug cartels, destroyed these public institutions. But having been a manufacturer, having solved a lot of problems, there is a process you go through, and that is what I want to see this Committee engaged in, not here at the dais but down there, with genuine conversations, and we will

do it in a very organized process, trying to address all the complexities of this, but also then trying to find the priorities. What are the things we have to fix now, in the here and now, and what are the longer-term solutions as well?

So I am absolutely dedicated to doing this, and it is going to be a completely different process than this Senate has been participating in as long as I have been a Senator. It is going to be genuine conversation, it is going to be, I think, Senators with goodwill who recognize the problem and working toward real solutions. So again, I appreciate that. All you have to do is show up, but we are going to be holding multiple meetings, and they will go on for quite some time. You know how tenacious I am.

With that, Senator Sinema.

OPENING STATEMENT OF SENATOR SINEMA

Senator SINEMA. Thank you, Chairman. Our Nation faces a crisis along the Southern Border. I am committed to continuing our bipartisan work to strengthen border security, stop the flow of migrants to our Southern Border, and ensure fair and humane treatment of the migrants who do come.

The situation on the ground in Arizona with our communities, our NGO's, and our border workforce is not sustainable, so I want to make sure that we are working together to develop bipartisan and common-sense solutions. These solutions have to include measures that push back against the human traffickers and the criminal organizations who prey on migrants, and I am pleased that we are having this hearing and I look forward to our discussion.

My first question today is for Mr. Nevano. According to recent data, over 590,000 migrants have crossed our borders just this fiscal year, and all along the over 2,000-mile journey from Central America to Arizona migrants are targeted by criminal elements—human traffickers, smugglers who transport migrants through Mexico for a fee, and other criminals who are seeking to hurt these families.

Of the migrants who are coming to our border, approximately how many have had some interaction with a criminal element during their journey to the United States, and how many of those migrants received assistance on their journey from smugglers?

Mr. NEVANO. Senator, thank you for your question. I am not sure that anyone can give you the exact numbers as far as the estimates that you are asking for. However, I would say to make that 1,500-mile journey it is very difficult to do that on your own. These smuggling organizations are recruiting these individuals, making false promises to them about getting into the United States, making a better life, promising them lucrative jobs when they get here, and once they get here the traffickers take over and put them in totally different circumstances.

I will say that in order to make that journey a very high percentage of these individuals are seeking assistance, paying upwards of \$7,000 to \$8,000 for that journey, to make it to the border, thinking they are coming for a better life, only to be exploited once they pass the border, whether it is between ports of entry or through a port of entry.

Senator SINEMA. Mr. Nevano, regarding these smugglers who are, quote, "assisting" individuals to come to this country, do you have any information about how closely linked they are to transnational criminal organizations that work to ship drugs as well as people across the border?

Mr. NEVANO. Sure. That is a very excellent question. What we term "illicit pathways," these illicit pathways are controlled by the cartels. They are used to bring narcotics through those pathways and they will use them to bring people. Those smugglers, the transnational organizations, criminal organizations, do not care what the product is, whether it is a commodity, whether it is a person. They use those same pathways. The human smugglers may have to pay a fee to the cartels to use those pathways to come up, but there is a direct correlation between the pathways used for smuggling narcotics as those for smuggling persons.

Senator SINEMA. Thank you. My next question is actually for all of the panel. I would welcome all of your thoughts. It is clear to me, and to many Arizonans, that our Nation faces a direct threat from these smuggling operations, and, of course, they are taking advantage of people in Central America. I would like to hear a little bit more about what our national strategy is to defeat this threat, and what are some of the steps that your agencies are taking to counteract these criminal transnational organizations?

Mr. HASTINGS. Thank you, ma'am. So for the Border Patrol, again, I do not want to sound like a broken record but I will say it is very hard to delve in, to interview, and to follow through with getting the proper intelligence when we are just trying to get the throughput. When we are overwhelmed by the mass amount of UACs and families that are coming into our facilities, it is very difficult to take the time to delve into a smuggling case. We try to the best of our ability but we also are trying to balance that with the humanitarian crisis that we currently have.

So it is very difficult, and that is why we would, again, ask for the legislative changes that stop this draw, so we can go back and focus on the smuggling, focus on the trafficking, focus on the DTOs that are bringing thousands of pounds of narcotics into our country through the ports of entry and in between the ports of entry.

Mr. HOWE. Thank you, Senator. Similar to Chief Hastings, were are in the interdiction phase, so we are identifying the smuggling attempt and stopping it. I mentioned earlier, on average, there are about 400 criminal prosecutions on the Southwest Border, for people that are trying to be smuggled into the United States. We are on that front end of it. The back end, that investigation, really is through our ICE partners, to get into the details of the DTOs.

Mr. NEVANO. Senator, the paradigm of effective border security starts 1,500 miles out with capacity-building and training foreign police officers to interdict, train them, provide them the equipment, and that is something that Homeland Security is doing to attack the foreign problem. We know that does not always work, and our brothers and sisters at Customs and Border Protection are the interdictors, so there is definitely a border security at our borders.

But interior enforcement is equally as part of that three-pronged approach to the paradigm of border security, and that is taking the pull factor, the magnet, away from them, by having an effective

worksit enforcement strategy. Because worksit enforcement bleeds several other collateral crimes. These individuals, once they get here, they know they are promised a job, and that is where the human trafficking, the fraudulent documents, the identity benefit fraud, that is where all that happens, the false promise of a job.

So it has to be a three-pronged approach to effective border security.

Senator SINEMA. I appreciate that. A quick follow up question. Director Hastings, you mentioned changing American laws, which I think we could all agree is difficult in our current political climate. What I am looking for, and really am grateful to be working with the Chairman and others on this, is ways to help the Administration improve the credible fear process. That is something that we are working on, to try and figure out how can we do that, given the difficult partisan political climate that we are living in.

I am also really interested in figuring out how do we disrupt these smuggling networks, so that they no longer see a financial benefit, and they do not see this as a smart business plan to bring groups to the United States and try to exploit the so-called loop-hole?

Mr. HASTINGS. So for us, and what we hear in the field, and I shared this earlier, but it is from those who we interview, time and time again, frankly, what we are told is from social media or from a family member here or from a friend here, "I have heard bring a child and I will be released within 10 to 20 days." Until there is something that can address that flow, allow us to keep that family unit together, and allow us to run them through the proper cycle, to allow them to have their due process and due rights, and then return them if there is no credible fear, and apply a consequence. If we are not applying a consequence then we are going to continue to see this issue.

Senator SINEMA. I am glad you mentioned that. That is the exact issue that we are working on, to try and figure out how do we get folks and families—I am talking about legitimate families, not the illegitimate ones that we see—how do we help process families in a timely manner to address the *Flores* issue, while also sending a clear message to those Northern Triangle countries that this is not an effective strategy to get into the United States of America. It is going to be difficult, I understand, but that is something that we are very interested in doing, is figuring out how do we help process families and folks faster, to actually get folks back home if they do not qualify for asylum or for some other legal status of entry to our country.

Mr. Chairman, I see that my time has expired.

Chairman JOHNSON. Senator Sinema, first of all, thank you for working and cooperating with me and my staff on Operation Safe Return, along with Senator Peters, so hopefully we can get that letter of support and DHS can implement that, as just a first step, to provide that consequence, with real care and compassion. So thank you for your efforts there.

I want to thank, again, the witnesses for just your service to this country. Chief Hastings, thank you for providing that example of a Border Patrol officer pulling somebody out of the river, applying CPR, saving their life. That is just an example of, I am sure, thou-

sands of examples of compassion, the type of care that the Border Patrol, ICE, the DHS really provides people.

We saw passion today at the hearing. That is good. It shows that the Members of this Committee are deeply concerned and want to get to a solution. So that will be my job is turn that passion into commitment to actually act.

I want to thank all of you for your service. I want to thank Senator Sinema, my colleagues on the Committee, and again, my commitment. We will start holding these meetings where we will have a genuine and robust discussion in that problem-solving process, and it will result in good ideas, areas of agreement, and possibly a full piece of legislation, or, if not, elements, components that can be added to other legislation, that other committees may take up as well.

But this Committee has led on this issue. I do not think any committee has held more hearings, gathered more information, shocked to understand this problem and all its complexities more than this Committee has over the last 4½ years, and now it is time to turn that into action. Again, I think we have the Members of this Committee, Senator Sinema is one of them, that really will come to that table, right here in this committee room, probably starting the week after we return, and have those robust discussions to come to some agreement and start solving this problem.

So again, thank you all.

The hearing record will remain open for 15 days, until July 11 at 5 p.m., for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 11:27 a.m., the Committee was adjourned.]

A P P E N D I X

Opening Statement of Chairman Ron Johnson
"Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude."
Wednesday, June 26, 2019

This is the third in a series of hearings about the unprecedented crisis at the southern border. Last month alone, U.S. Border Patrol apprehended 132,887 aliens attempting to enter the United States unlawfully at the southern border. More than one million illegal migrants are projected to be apprehended this fiscal year, the highest in more than a decade. What makes this problem even worse is the change in composition of illegal migrants from single adult male economic migrants that can be quickly returned to unaccompanied children and family units who are able to exploit our system and stay in the U.S. indefinitely.

Today we will examine an aspect of the crisis frequently ignored: the exploitation of migrants through smuggling, trafficking, and forced labor. It starts with the journey into the United States. At the mercy of their smugglers, migrants who cannot keep up are abandoned or left for dead. Women are sexually assaulted; some studies suggest as many as 1 out of 3 female migrants may be victims. Corrupt government officials demand bribes, while cartels, backed with threats of violence, demand payment from everyone crossing the border. Some smugglers require payments before migrants are allowed to cross the border, causing some migrants to mortgage their homes. Those who cannot pay up front become indebted to traffickers. One method traffickers use to get paid is to hold their victims in stash houses, take videos of beatings, and then send those videos to their families demanding payment for their release.

Once migrants arrive at the U.S. border, our broken immigration system encourages other kinds of exploitation. Migrants know that crossing the border with a child ensures their prompt release. A few recent DHS investigations found that 15 to 30 percent of suspicious family units investigated were fraudulent. These are only pilot programs; the true extent of the fraud could be even more pervasive. With easy access to fake documents, smugglers are pairing children with adults, often males that have no relation to the child. We have seen this go horribly wrong. In one case, a 3-year-old child was abandoned in a cornfield with only a note with his name and an out-of-service phone number attached to his shoe.

Even when migrants make it into the United States, the promise of a better life can quickly become a living hell as smuggling transforms into sex trafficking or other forms of involuntary servitude. In one case, Rafael Cadena-Sosa and his family would lure girls as young as fourteen to be smuggled into the United States from Mexico with promises of jobs. He then imposed large smuggling debts on them, brutally beat and sexually abused them, and threatened their families with death. He made this horrific reality even worse by forcing them to prostitute themselves for as many as 12 hours a day, six days a week. Fortunately, he was caught and is now serving 15 years in jail. How many other Raphael Cadena-Sosa's are still abusing their human trafficking victims?

Tragically, that is not an isolated incident. Our Permanent Subcommittee on Investigations held hearings about forced migrant labor on chicken farms in Ohio. And in my state of Wisconsin, a Georgia-based human tracking scheme moved legal agricultural workers

into the state, forcing them to illegally pay recruiting fees and work in dangerous conditions. If the migrants protested, they were threatened with deportation. These stories demonstrate how predators take advantage of vulnerable migrants. With our immigration system overwhelmed, the risk of exploitation is amplified.

The dedicated men and women of Customs and Border Protection and Immigration and Customs Enforcement, among other agencies, work tirelessly to combat these problems. They work in trying and arduous conditions to defend our border, and when called upon to perform tasks outside of their job descriptions, they do so with dignity and compassion despite woefully inadequate resources. I am grateful to the witnesses for being here today.

**U.S. Senate Committee on Homeland Security and Governmental Affairs
“Unprecedented Migration at the U.S. Southern Border: The Exploitation of
Migrants through Smuggling, Trafficking, and Involuntary Servitude”**

**OPENING STATEMENT OF RANKING MEMBER GARY C. PETERS
JUNE 26, 2019
AS PREPARED FOR DELIVERY**

Thank you, Mr. Chairman for convening this hearing. I look forward to discussing how we can combat human trafficking, a horrific criminal enterprise that exploits vulnerable people arriving at our Southern border and across the country.

Desperation drives families into the hands of human traffickers. And the same desperation drives some families to attempt the journey north on their own.

I was devastated by the photo showing Oscar Martinez-Ramirez and his daughter Valeria, who drowned clinging together in their final moments as they attempted to cross the Rio Grande and seek asylum in the United States.

No one is more vulnerable than a child. Like most Americans, I am heart-broken that migrant children in U.S. custody, including toddlers and infants, have been subjected to unsafe conditions and denied basic necessities.

It is unconscionable that the Administration would argue in court that it should not be required to provide soap and a toothbrush for a child in its custody.

Even prisoners of war are provided with soap under the Geneva Conventions.

There is no question that children in federal custody deserve basic necessities including warm meals, blankets, and access to medical care.

We must prioritize keeping families together and keeping children safe and healthy. I have made inquiries to Customs and Border Protection, Immigration and Customs Enforcement, and The Office of Refugee Resettlement to learn more about these reports and the conditions experienced by children in U.S. custody.

I will continue working with my colleagues to ensure that they are treated with dignity and receive appropriate care.

We cannot fully address the situation on our southern border and keep children safe without disrupting smuggling networks and combating the scourge of human trafficking.

Human trafficking is the fastest growing criminal enterprise in the world and it is a serious issue along both our Northern and Southern borders.

My home state of Michigan has the sixth-highest number of reported cases of human trafficking in the country.

Despite the scope of this problem, there is a lot we don't know about the illicit business of human trafficking. We need a better understanding of how transnational criminal organizations operate, finance, and profit from these smuggling rings.

We need to work with Mexico and the Northern Triangle countries to address corruption, lawlessness, and other root causes of migration.

We need strong, stable border security policies. Traffickers thrive on chaos and leverage American threats of future crackdowns to induce families to quickly embark on the dangerous journey north.

We need less chaos. We can all agree that the status quo is both unacceptable and unsustainable. We all share the goal of protecting vulnerable people from human traffickers.

That bipartisan support is reflected in the supplemental funding bill the Senate will soon be considering. This legislation was approved last week by the Appropriations Committee by a vote of 30 to one.

It includes critical resources to help offices like Homeland Security Investigations root out smuggling networks.

We must provide the right resources in addressing the challenges we face at our Southern border. And we need a full understanding of the facts on the ground to properly align efforts across the federal government.

Chairman Johnson and I share an appreciation for data-driven discussions. We need to improve the Department of Homeland Security's data analytics in order to better combat transnational criminal organizations, disrupt human trafficking, and deliver long-term solutions to secure our borders and protect vulnerable populations.

Thank you to our witnesses for being here today. I look forward to your testimony and hearing more about how we can stamp out human trafficking.



TESTIMONY OF

Brian S. Hastings
Chief
Law Enforcement Operations
U.S. Border Patrol
U.S. Customs and Border Protection

and

Randy Howe
Executive Director for Operations
Office of Field Operations
U.S. Customs and Border Protection

BEFORE

U.S. Senate
Committee on Homeland Security

ON

"Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude"

June 26, 2019
Washington, DC

Chairman Johnson, Ranking Member Peters, and Members of the Committee, thank you for the opportunity to appear before you today. Human trafficking is a crime that affects communities across the United States and around the world. Whether it is for sex trafficking or forced labor, human trafficking victimizes 25 million people around the world and generates billions of dollars in profits for criminal enterprises every year. The prevalence of human trafficking throughout the world is an urgent humanitarian issue with direct and significant consequences on the United States.

As the nation's largest law enforcement agency, and the guardians of America's frontlines, U.S. Customs and Border Protection (CBP) plays a critical role in the fight against human trafficking. Together with our fellow U.S. Department of Homeland Security (DHS) components, the Department of State, and our interagency partners, and our law enforcement counterparts around the world, we are working to end this heinous form of modern day slavery.

CBP's mission to secure our country's borders, as well as our unique travel and trade equities, help us recognize and intercept human traffickers and—hopefully—identify and assist human trafficking victims.

A Crisis at the Border

As this Committee is aware, CBP is currently experiencing an unprecedented and unsustainable situation at the southwest border. In fact, it is nothing short of a border security and humanitarian crisis. From October 1, 2018 to May 31, 2019, enforcement actions¹ on the southwest border reached 676,315, an increase of 99 percent over the same time the previous year. Border Patrol southwest border apprehensions, a subset of these enforcement actions, reached more than 593,000 at the end of May. That number represents more apprehensions than full fiscal year totals for the previous ten years.

Each day, we see the cascading effects of mass immigration both at and between our ports of entry (POEs). The vast majority of migrants are Central American families and unaccompanied alien children (UAC). In FY 2019 to date, UAC and family units represent 66 percent of all southwest border inadmissible individuals and apprehensions.

The majority of individuals encountered now originate from the three countries of Central America known as the Northern Triangle: Guatemala, Honduras, and El Salvador. The number of Northern Triangle migrants exceeded the number of Mexican migrants in four of the past five fiscal years and in May 2019, 78 percent of all southwest border apprehensions came from the Northern Triangle. Unlike single adult migrants from Mexico, UACs or families from Central America cannot be swiftly repatriated.

Exacerbating these challenges, the U.S. Border Patrol is now apprehending larger and larger groups between ports of entry; more than 190 groups of migrants each comprising over 100 members (primarily Guatemalan and Honduran families) have been apprehended between ports

¹ An enforcement action is any action taken by ICE or CBP to apprehend, arrest, interview, or search an individual, or to surveil an individual for enforcement purposes.

of entry so far this fiscal year. Last month, Border Patrol reached an unfortunate record when more than 1,000 migrants illegally entered the United States in the largest single group ever encountered.

The increased shift to these more vulnerable migrant populations, combined with the overwhelming numbers, profoundly affects our ability to patrol the border and diminishes our ability to prevent deadly narcotics and dangerous people from entering our country. It also detracts from our ability to facilitate lawful trade and travel.

Similar to what we see *between* POEs, CBP is experiencing increased numbers of migrants at POEs, including family units and other aliens who arrive without proper documents, many of whom claim a fear of return. Large groups of inadmissible aliens, sometimes in the hundreds, arriving at POEs strain our processes and divert our officers from their priority missions, as those migrants need to be processed in a humane and efficient manner. This crisis has depleted detention capacity of U.S. Immigration and Customs Enforcement (ICE) and greatly overwhelmed its resources.

The consequences of this mass migration are far-reaching. Border Patrol has been forced to divert between 40 and 60 percent of its manpower away from the border security mission to provide humanitarian care to families and children. This means fewer agents are available to stop drugs and dangerous criminals from entering the United States.

To help the Border Patrol with processing the unprecedented number of migrants, CBP has temporarily shifted more than 700 CBP Officers from POEs to Border Patrol stations between the ports. Fewer officers at ports of entry means that pedestrians, passenger vehicles, and commercial trucks trying to cross the border are experiencing uncharacteristically long delays. Some POEs have been forced to close some travel lanes and curtail some weekend cargo processing hours, all affecting the flow of commerce and legitimate travel in the United States.

In addition, the influx of family units has led to CBP facilities operating at unprecedented and unsustainable capacity. Short-term holding facilities at POEs and Border Patrol stations were designed neither for the large volume of inadmissible persons and apprehensions nor the long-term custody of individuals awaiting transfer to ICE Enforcement and Removal Operations detention facilities. We consider 4,000 detainees to be a high number of migrants in custody, and consider 6,000 detainees to be at a crisis level. Currently on any given day, CBP has between 12,000 and 18,000 detainees in custody.

Efforts to Identify Human Trafficking

When examining the crisis we are facing at the southwest border, it is helpful to understand the distinction between human trafficking and human smuggling. Human trafficking involves force, fraud or coercion and is a crime against a person or group of persons that is exploitation-based. Trafficking does not require crossing a border. As defined in the *Trafficking Victims Protection Act*, human trafficking includes: sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18

years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Human smuggling is voluntary, a crime against the nation-state, transportation-based, and requires an international border crossing. It is defined as the importation of people into the United States with deliberate evasion of immigration laws. This offense includes bringing individuals into the United States illegally as well as the unlawful transportation and harboring of individuals already in the United States.

CBP has a number of tools for screening incoming travelers, processing more than a million travelers every day. The same risk-analysis techniques CBP uses to prevent the entry of terrorists and other criminals also help us intercept human traffickers and the victims of human trafficking. In addition to the biographic and biometric system queries we apply to each traveler, CBP personnel also interview these individuals to determine the purpose of their travel. The interview is also an opportunity for CBP Agents and Officers to look for indicators of human trafficking.

Training is critical in detecting the signs of human trafficking, which is too often an invisible crime. As part of basic training, officers and agents are taught the differences between human trafficking and human smuggling, how to detect human trafficking, and what to do upon encountering a human trafficker or a trafficking victim. These skills are refreshed annually.

CBP takes particular care with vulnerable populations, such as unaccompanied minors. Under current procedures, CBP screens all suspected minors, to include UAC using CBP Form 93, Unaccompanied Alien Children Screening Addendum, to determine if they have been, or are likely to be, victims of human trafficking. CBP Form 93 includes examples of trafficking indicators and requires the processing agent or officer to pursue age-appropriate questions to help identify if UAC may have been, or is likely to be, a victim of trafficking or has a fear of return. Based on the totality of the situation, including visual indicators and verbal responses, the CBP agent or officer determines if the UAC is a victim or potential victim of trafficking. CBP conducts these screenings at the processing location— generally at a POE or a Border Patrol station. All potential trafficking cases are referred to U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) for further investigation.

CBP is close to finalizing an updated CBP Form 93, UAC Screening Addendum. CBP involved extensive expert consultation and Department-wide coordination to effectively identify potential victims of human trafficking with this screening tool while also ensuring the screener's questions follow a victim-centered approach. CBP faces challenges in using an outdated information technology system to record the results of CBP Form 93.

Human trafficking is occurring everywhere, at all times, across the United States and around the globe. As noted earlier, a person does not need to cross a border, be transported, or otherwise move localities to be trafficked, but victims and their traffickers may travel by air and all other forms of transportation. Victims may travel alone or their traffickers may accompany and control

them. Aviation industry personnel can help fight this heinous crime by learning to spot the indicators of trafficking and reporting suspected cases to law enforcement.

The Blue Lightning Initiative (BLI)—jointly led by U.S. Department of Homeland Security (DHS) and the U.S. Department of Transportation's (DOT)—trains U.S. commercial airlines and their employees to identify potential human trafficking victims and to notify federal authorities. This initiative is one of several joint, collaborative efforts to ensure that America's transportation systems are not being exploited for human trafficking.

BLI has become known as the leading method for fighting human trafficking within the aviation industry. Our initiative has significantly raised the awareness levels of aviation personnel, and improved their ability to recognize and report suspected human trafficking to law enforcement.

BLI provides participating partners with a training module developed by survivor advocates, law enforcement, and aviation experts. The interactive module outlines common indicators of human trafficking that aviation personnel may encounter, and explains how airline personnel can immediately report potential victims and their traffickers to law enforcement. The module includes aviation-based scenarios that allow users to practice recognizing human trafficking indicators. The module may be integrated into initial and refresher training for flight attendants, pilots, customer service representatives, and other personnel. The BLI training module is rounded out with supplemental educational materials.

Every day these skills are put to the test as CBP Officers and Agents encounter historic levels of migration.

The Role of Transnational Criminal Organizations and Alien Smuggling Organizations

The current migration patterns have reaped huge profits for the transnational criminal organizations (TCOs) that use smuggling as a cash flow source. TCOs are motivated by money and power and have little regard for human life. Their networks are commodity agnostic—a human being is moved along with no more care than a gun or a bundle of drugs. When aliens enter these networks, they may find themselves beaten, assaulted, raped, and even killed by TCO members.

TCOs are both motivated and ruthless—they are not bound by legitimate business practices or the pace of bureaucracy, and will stop at nothing to gain power and profit. They are agile and adaptable, and are willing to spend countless resources maintaining and expanding control of their criminal enterprises.

Migrants often pay human smuggling groups thousands of dollars to aid them on their journey. Smugglers profit from human misery by misleading those seeking a better life, and traffickers profit from human misery by exploiting people through force. Both lead to abuse and exploitation of people on their journey north, which is why Congress needs to close loopholes in our nation's legislative system that inadvertently aids cross-border smuggling and trafficking.

The toll of the arduous journey is compounded for those migrants who are further victimized when human smuggling turns into human trafficking. In a well-publicized 2018 case², Pablo Duran Ramirez and three other defendants pleaded guilty in U.S. District Court in the Northern District of Ohio to encouraging the illegal entry of Guatemalan nationals, including unaccompanied minors, into the United States. The defendants recruited workers from Guatemala, some as young as 14 years old, promising good jobs and a chance to attend school in the United States. The defendants smuggled the migrants into the country and transported them to a trailer park in Ohio. There, the migrants were forced to live in dilapidated trailers and work at an egg farm up to twelve hours a day. The victims were threatened with violence and their pay was withheld. Two adults and eight minors were identified as victims of human trafficking in this case.

Human smugglers have no regard for the health and safety of the migrants on whom they prey, and who pay them. As a result, many who make the journey become sick, injured, or traumatized. Some even lose their lives.

Many migrants travel north from countries where poverty and disease are rampant, and their health can be aggravated by the physical toll of the journey. They may have never seen a doctor, received immunizations, or lived in sanitary conditions. Close quarters on trains and buses that smugglers procure for moving them through Mexico can hasten the spread of communicable diseases. All of these factors leave migrants vulnerable to serious medical complications. In many cases, they arrive at our southern border already exhibiting symptoms of a health issue.

The smugglers, many with ties to TCOs, often deprive migrants of food and water, physically assault them, and place them in inhumane traveling conditions, such as locking them in tractor-trailers where temperatures inside have exceeded 123 degrees. The Border Patrol has rescued more than 2,250 migrants from tractor-trailers this year alone.

TCOs continually adjust their operations to avoid detection and interdiction by law enforcement, and—like legitimate businesses—are quick to take advantage of improved technology, cheaper transportation, and better distribution methods.

TCOs are known to use scouts as a counter-surveillance tactic. Scouts embed in both remote, rugged terrain and in urban communities, watching and reporting on law enforcement activities. TCOs who deploy these scouts use robust, high-technical communication methods to conceal their communication from law enforcement. TCOs also attempt to intercept law enforcement communication. While it is illegal to attempt to obtain law enforcement sensitive information, some scouts simply exploit public venues where law enforcement operates, such as monitoring the comings and goings of patrol vehicles from a Border Patrol station.

² <https://www.justice.gov/usao-ndoh/pr/another-defendant-pleads-guilty-connection-labor-trafficking-minors-ohio-egg-farm>

Congress Must Act

Our crisis at the southwest border is the direct consequence of vulnerabilities in our legal framework that have become well-known to smugglers. These weaknesses in our laws now represent the most significant factors impacting border security and include:

- Low credible fear standards —where approximately 80 percent of individuals meet the initial credible fear bar in the asylum process, while only 10-20 percent are found to have valid asylum claims at the end of immigration court proceedings;
- The disparate treatment of UAC under the *Trafficking Victims Protection Reauthorization Act of 2008*, which allows for children arriving from Mexico and Canada to be quickly repatriated, but not children from other countries, including Northern Triangle countries; and
- The inability to keep families together while they complete expeditious and fair immigration proceedings. Instead, crossing with a child is a near guarantee of a speedy release and an indefinite stay in the United States.

These statutory deficiencies ensure a high likelihood of success and the incentives they create have significant ramifications. Central American families are coming to our border now because they know that DHS must, pursuant to a court order, release them quickly—generally within 20 days—and that they will be allowed to stay in the U.S. indefinitely while awaiting protracted immigration court proceedings. To be clear, these families are not concerned with being caught by the Border Patrol—they are actually turning themselves in, knowing that they will be processed and released with a court date years in the future. Smugglers are exploiting these loopholes to encourage more migration. They openly advertise a safe and legal journey to the United States, misleading families by telling them there is a policy that anyone who arrives with a child will not be deported.

The perception that our system will allow families to stay in the U.S. indefinitely is clearly a major pull factor used by smugglers to convince migrants to journey to our border.

Along with important push factors, which include high levels of insecurity, limited economic opportunity, and weak governance in many parts of Central America, this perception about our immigration system incentivizes migrants to put their lives in the hands of smugglers and make the dangerous trek north to the Southwest border. The cost of these pull and push factors is seen every day in profits derived by transnational criminal organizations, in the lives lost along the journey, and in the loss of youth in the countries of the Northern Triangle.

Additionally, regardless of whether an individual who has entered illegally has a valid case for protection or asylum, they are increasingly unlikely to be repatriated. Assurance of release due to court rulings, compounded by a multi-year immigration court backlog, means that there is virtually no border enforcement for families. Indeed, only 1.5% of family units from Central America apprehended in FY 2017 have been removed to their countries of origin, despite the fact that most will not end up having valid claims to remain in the U.S. when their court proceeding

concludes. This backlogged system gives credibility to the smugglers' claim that families will not be deported.

Conclusion

CBP has dedicated every available resource to stop the flow of illegal migrants and dangerous drugs into the United States, including personnel, technology, and innovative outreach and engagement with international and non-governmental industry partners. However, despite our efforts, the system is overwhelmed. The nation is facing a full-blown security and humanitarian crisis along our southwest border. We need Congress to acknowledge the crisis by taking legislative action in support of CBP and our partners. We need to make it harder for smugglers and traffickers to profit from our broken immigration system.

Thank you for your time. I look forward to your questions.



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING

*"THE EXPLOITATION OF MIGRANTS THROUGH SMUGGLING,
TRAFFICKING, AND INVOLUNTARY SERVITUDE"*

BEFORE THE

U.S. SENATE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS

Wednesday, June 26, 2019

INTRODUCTION

Chairman Johnson, Ranking Member Peters, and distinguished members of the Committee.

Thank you for the opportunity to appear before you today to provide an update on the ongoing situation along our Southern Border and to discuss the support provided by U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) in the investigation of human smuggling and the protection of victims, especially children.

As the largest investigative agency within the U.S. Department of Homeland Security (DHS), ICE's HSI investigates and enforces more than 400 federal criminal statutes, including the *Immigration and Nationality Act* under Title 8 United States Code, U.S. customs laws under Title 19 United States Code, and general federal crimes under Title 18 United States Code, as well as many others. HSI Special Agents use this unique and broad statutory authority to investigate all types of cross-border criminal activity and work in close coordination with U.S. Customs and Border Protection (CBP) and our state, local, tribal, and international partners in a unified effort to target transnational criminal organizations (TCOs) that prey on individuals who unwittingly, or unwittingly, place their trust in nefarious actors to transport them illegally into the United States.

As the Assistant Director of HSI's Investigative Programs, I lead approximately 350 employees and 16 investigative units, including human smuggling, human trafficking, financial crimes, narcotics, worksite enforcement, document and benefit fraud, criminal gangs, undercover operations, asset forfeiture, and the victim assistance program. Additionally, I oversee several operations centers responsible for criminal targeting, counter-network development, and the fusion of intelligence and law enforcement information to assist investigative and enforcement efforts against transnational organized crime.

Throughout my nearly three decades of working for both HSI and the former Immigration and Naturalization Service, I have witnessed firsthand the perils individuals are willing to endure to seek a better life in the United States. There was no better illustration of this than in June 1994 when, while conducting a maritime inspection of a vessel in South Boston, Massachusetts, I encountered 11 Romanian stowaways hidden in a container on the vessel. The stowaways spent nearly two weeks in the container with little to no food or water and only a small hole cut in the side for them to breathe. As a young officer, this incident put into perspective and molded the way in which I approached every future encounter with a person who was seeking to enter this country.

HSI's Efforts to Combat Human Smuggling

HSI is charged with protecting national security and public safety by enforcing the nation's immigration and customs laws, and combating human smuggling is an HSI core mission priority. Human smuggling is often accompanied by other collateral crimes such as document and benefit fraud, illicit financial activity, and human trafficking.

Human smuggling and human trafficking are often conflated as being one and the same type of crime. I would like to take a few moments to explain the key differences between them.

Human smuggling involves the provision of a service—typically, transportation or fraudulent documents—to an individual who voluntarily seeks to enter a foreign country illegally. In Fiscal Year (FY) 2018, HSI initiated 1,671 cases and made 4,081 criminal and 2,987 administrative arrests related to human smuggling.

Human trafficking, however, is a crime involving the exploitation of someone for the purposes of compelled labor or a commercial sex act, either of a minor or through the use of force, fraud, or coercion. Immigration status or country of citizenship is not an element of human trafficking, nor is movement across an international border. Often, a venture to the United States starts off as a human smuggling event where the person is complicit to the act but turns quickly into a human trafficking event when the person is compelled to either labor or engage in commercial sex. This is distinct from extortion and hostage taking during human smuggling. Human trafficking often occurs after the person(s) have made it into the interior of the United States, which is why it is difficult to detect if someone crossing the border is a trafficking victim. In FY 2018, HSI initiated 849 cases, made 1,588 criminal arrests, and rescued 308 victims of human trafficking.

Based on the collection of intelligence and investigatory evidence, we observe that human smuggling enterprises and the drug cartels maintain a symbiotic relationship with each other. Certain members of these criminal enterprises control the major U.S. and foreign drug markets and others control the “smuggling flow,” otherwise known as the “illicit pathways.” Some human smugglers are required to pay taxes and fees to cartels for access to smuggling routes through specific geographic areas and are often subject to physical violence, extortion, and/or death if proper coordination and compensation are not rendered for these services. In addition, failed coordination between the cartels and human smuggling enterprises greatly increases the risk of unwanted law enforcement attention and investigative efforts, which is bad for business.

These human smuggling ventures often lead to extremely dangerous circumstances that pose both a threat to public safety as well as create humanitarian concerns. HSI has encountered smuggled aliens that have been kidnapped, taken hostage, beaten, sexually assaulted, threatened with murder, or have died as a result of the often-dangerous conditions encountered during their passage.

Our intelligence indicates desperate migrants pay smugglers upwards of \$8,000 in U.S. dollars (USD) to be smuggled from Northern Triangle countries and over \$70,000 USD from the Eastern Hemisphere to aid them on their illegal journey. As part of their business model, smugglers and traffickers often force the migrants into inhumane conditions, and upon arrival to the United States, these aliens and their family members are frequently extorted for additional and extraordinary sums of money, kept in decrepit stash houses, and prevented from joining family members until demands are met.

We also know that the drug cartels are using the migrants as human diversions by putting them into large groups and dropping them at remote locations in the middle of the night, forcing U.S. Border Patrol (USBP) officers to redirect their coverage to rescue these groups. These diversions often lead to resources being stretched so thin that groups of smuggled aliens and incidents of smuggled narcotics and other dangerous contraband are unavoidably missed by authorities at the southern border.

In order to identify high risk subjects who attempt to utilize these illicit pathways to enter the United States, HSI has collaborated with CBP, the U.S. Department of State, and the U.S. Department of Defense (DOD) in the Biometric Identification Transnational Migration Alert Program (BITMAP). Under this program, HSI trains and equips foreign counterparts to tactically collect biometric and biographic data on criminals, gang members, and other persons of interest as identified by the host country. Foreign partners share this data with HSI to populate and enhance U.S. government databases. In FY 2018, BITMAP enrolled over 41,000 encounters of persons of interest, including 31 biometric enrollments of Known and Suspected Terrorists (KST) and 81 enrollments resulting in a biometric enhancement to a KST record. BITMAP matched nearly 190 persons to the DOD Biometrically Enabled Watchlist (BEWL) and added 200 new identities to the BEWL. Since inception in FY 2011, BITMAP has enrolled over 94,000 encounters of persons of interest, including over 450 enrollments of KSTs. BITMAP has matched over 230 persons to the DOD BEWL and added 1,500 new identities to the DOD BEWL.

HSI's Efforts to Identify Fraudulent Families

Human smugglers are currently capitalizing on the trend of fraudulent families crossing the border to enter the United States. The cartels and human smugglers are well versed in our inability to detain family units for the length of time necessary for their cases to be decided, in large part due to the *Flores Settlement Agreement* and judicial decisions that interpret it. Family units and unaccompanied children are often released with little or no consequences for their illegal entry.

An unprecedented number of migrants from Guatemala, Honduras, and El Salvador have been arriving at the Southern Border of the United States. These migrants, including those falsely claiming to be family units, are currently inundating the Southern Border and are further stretching limited DHS resources. By falsely claiming to be a legal family unit, migrants avoid detention and/or prosecution and are subsequently released after being processed in an expedited fashion.

In response to this crisis, since April 2019, ICE has dedicated over 400 HSI personnel to assist in combating this issue. HSI deployed teams of special agents, intelligence analysts, forensic interview specialists, and document fraud examiners to the southern border. Teams have been tasked with interviewing groups suspected of fraudulently claiming familial relationships in order to facilitate human smuggling activity. As a result, between mid-April and June 21, 2019, HSI identified 316 fraudulent family units, 599 fraudulent documents, and presented 629 individuals for criminal violations.

I would like to discuss for a few moments two current HSI national operations that have been created to address this issue.

Operation Double Helix: Rapid DNA Testing

From May 6 to 10, 2019, HSI initiated a rapid DNA pilot called *Operation Double Helix* in El Paso and in McAllen, Texas. Both sites were selected for this initiative because they are considered the sectors with the highest family unit apprehensions along the southern border.

Selection of family units for Rapid DNA testing was based on factors such as key

observations obtained during interviewing, intelligence gathering, documentary evidence, and any investigative information developed during immigration removal processing. No DNA information from these tests has been stored as this was a presumptive test to validate a claimed familial relationship. During this operation, written consent was documented for DNA collection and testing, and each alleged parent was served with a privacy notice clarifying that testing was voluntary. HSI coordinated with the DHS Office for Civil Rights and Civil Liberties (CRCL) prior to the pilot to ensure appropriate CRCL protections and concerns were mitigated prior to the operation.

HSI Special Agents sought to gather intelligence and evidence to initiate robust investigations to identify the TCOs perpetuating the exploitation of these children, the production of fraudulent identity documents, and other criminal activity associated with human smuggling efforts. The goal of this operation was to remove children from these dangerous and potentially exploitative situations.

During this operation, a total of 84 family units were DNA tested after providing consent. Sixteen family units were found to be fraudulent during the testing. About half of the confirmed fraudulent family units were identified prior to DNA testing when the adult alien recanted their claim of a familial relationship when asked to consent to a DNA test. The teams were also advised by USBP agents that other subjects within the processing facilities not selected for testing voluntarily came forward and admitted they were part of a fraudulent family, as they heard/witnessed that DNA testing was being conducted. Based on the success of this operation, a second pilot of DNA testing—Operation Double Helix 2.0—is scheduled to begin on or about July 1, 2019.

One case I would like to highlight involves a 51-year-old Honduran male encountered by HSI agents in McAllen, Texas. The subject was with an infant child that he initially claimed was his son. While he was being interviewed for DNA testing, the subject confessed that he presented a fraudulent Honduran birth certificate for the infant child, who was not related to him in any fashion. The subject purchased the infant shortly after birth from the birth-mother for the equivalent of approximately \$84 USD. The subject did not present any documents to validate either a legal adoption of the infant or documents from the birth-mother indicating her consent to legally transfer custody of the infant to the subject. When interviewed, the subject admitted the infant was purchased solely as a means for him to enter the United States. Investigation revealed the subject was previously removed from the United States on two occasions in 2006 and 2013. The subject was charged in the Southern District of Texas with violations of Title 8 US Code §1324(a)(1)(A)(ii), alien smuggling, and Title 8 US Code § 1325, illegal entry.

Operation Noble Guardian

In early May 2019, HSI's Human Smuggling Unit (HSU), in coordination with CBP's National Targeting Center's (NTC) Counter Network Division, initiated *Operation Noble Guardian*. As previously mentioned, some migrants are exploiting our immigration laws, fraudulently claiming to be family units, avoiding detention and/or prosecution, and subsequently released after being processed in an expedited fashion.

The NTC assisted HSI in identifying adult migrants and accompanying alien children that entered the United States as alleged family units, and then the children subsequently departed the

United States via commercial airlines to Northern Triangle countries. As of June 21, 2019, 85 migrant children who were processed as part of a family unit have departed the United States. HSI is currently investigating these incidents to determine if these children are being used and recycled by adult migrants for the purpose of defrauding the United States.

As of June 21, 2019, HSU has developed 65 Investigative Referrals (IRs) that resulted in dozens of HSI interviews and other investigative activities, both domestically and internationally with assistance being provided in Guatemala by HSI's Transnational Criminal Investigative Unit (TCIU). These efforts have resulted in the development of two significant investigations based out of HSI Tampa and HSI Miami. Both investigations are being supported by the U.S. Attorney's Offices for the Middle (Tampa) and Southern (Miami) Districts of Florida.

A second line of effort under *Operation Noble Guardian* is to identify and locate these adults after the children have departed the United States. Many of these adults involved in fraudulent family units since their entry into the United States have been identified as absconders from ICE's Enforcement and Removal Operations and are now being targeted for arrest and deportation.

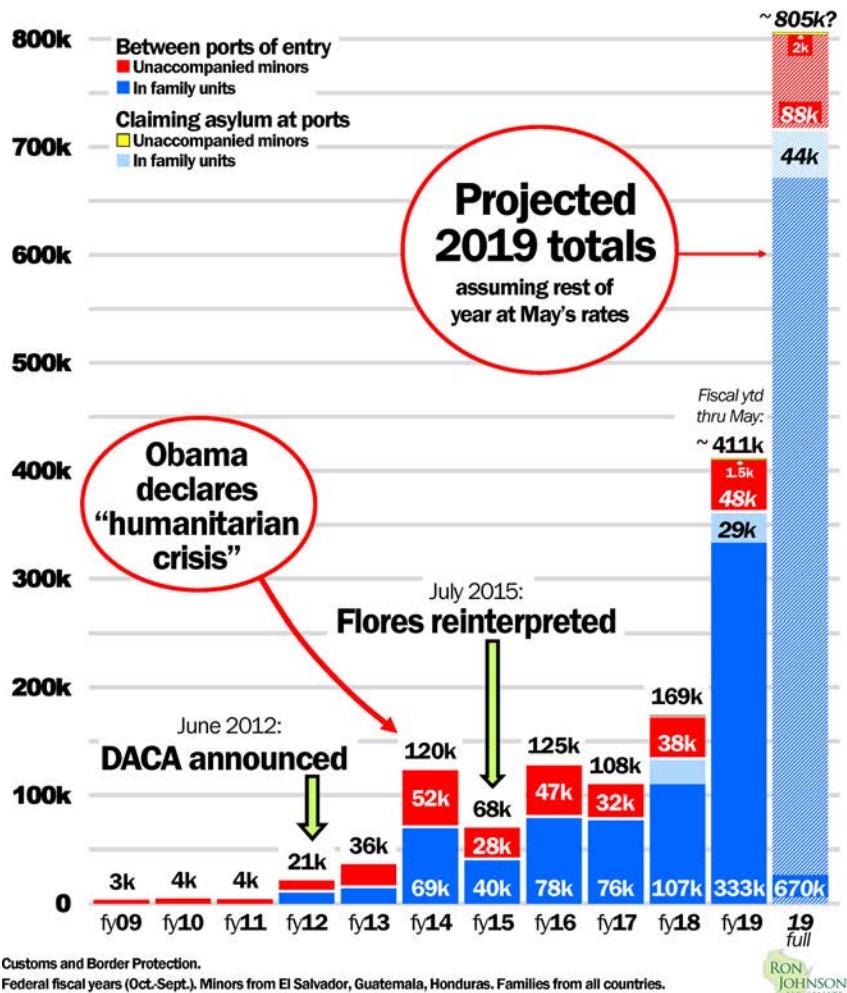
CONCLUSION

Thank you again for the opportunity to appear before you today and for your continued support of HSI and its law enforcement mission. HSI is committed to augmenting CBP's resources at our southern border to assist them with this unprecedented humanitarian and security crisis. However, without Congressional support, we will not be able to sustain this effort. We remain committed to working with all of our counterparts to utilize our unique authorities and resources to ensure the safety of children and to prevent them from being utilized by criminal enterprises to exploit our immigration system.

I appreciate your interest in this important issue and look forward to your questions.

MINORS AND FAMILIES

APPREHENDED AT S.W. BORDER OR CLAIMING ASYLUM AT PORTS





CWS Statement to the U.S. Senate Committee on Homeland Security and Governmental Affairs, pertaining to its hearing "Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude" on Wednesday, June 26, 2019

As a 73-year old humanitarian organization representing 37 Protestant, Anglican, and Orthodox communions and 25 refugee resettlement offices across 17 states, Church World Service (CWS) urges Congress to recognize the importance of providing individuals access to life-saving protection. Children, families, women and men are fleeing violence, gang conscription, trafficking and sexual exploitation in the Northern Triangle. Individuals seeking safety within the region and in the United States have clear and compelling protection concerns and the United States has moral and legal obligations under international and U.S. law to see that individuals seeking protection are not returned back into the hands of traffickers and others who seek to exploit them.

CWS is strongly opposed to any proposal that would weaken or eliminate provisions in the *Trafficking Victims Protection Reauthorization Act (TVPRRA)*, which provides important procedural protections for unaccompanied children in order to accurately determine if they are eligible for relief as victims of trafficking or persecution. Weakening existing legal protections, especially for children, undermines the United States' moral authority as a leader in combating human trafficking and increases vulnerabilities for trafficking victims by curtailing access to due process, legal representation, and child-appropriate services. CWS urges the administration and Congress to affirm the right of all people to seek protection and ensure that individuals seeking safety are not returned to their traffickers and exploitation.

CWS urges Congress to support community-based residential care, post-release services, and home studies that offer unaccompanied children a family-based care environment. The Department of Health and Human Services (HHS)'s Office of Refugee Resettlement (ORR) provides post-release case management services for some unaccompanied children to ensure they are released to suitable caregivers. However, due to historic underfunding, ORR's existing resources have been overwhelmed, even before the steep increase in unaccompanied children in 2014. As these services reach only a small fraction of children who are eligible to receive them, robust funding is critical so that all unaccompanied children who are in ORR's custody have access to community-based residential care and post-release case management services. We call on Congress to ensure ORR is adequately funded to protect all children's safety - and to provide ORR with contingency funds so that in times of unanticipated arrivals, ORR can adequately provide the full continuum of care for all populations within the Office's mandate. In addition, Congress should require ORR to report on the post-release services provided to children and families.

CWS is strongly opposed to any proposal that would undermine *Flores* protections or increase family incarceration, which is plagued with systemic abuse and inadequate access to medical care. These conditions are unacceptable, especially for children, pregnant and nursing mothers, and individuals with serious medical conditions. The American Association of Pediatrics has found that family detention facilities do not meet basic standards for children and "no child should be in detention centers or separated from parents." CWS urges Congress to reject any proposal that would expand family detention or violate the *Flores* agreement's long-standing consensus that children should not be detained for longer than 20 days.

CWS urges the administration to rescind its April 2018 information-sharing agreement between DHS and the Department of Health and Human Services (HHS) that turns HHS into an immigration enforcement agency and prolongs family separation. The agreement "requires HHS to share the immigration status of potential sponsors and other adults in their households with DHS to facilitate HHS's background checks." The population of detained unaccompanied children ballooned, and although HHS announced that it would stop requiring fingerprints from all household members of sponsors, ORR continues to share information about all potential sponsors with DHS, needlessly prolonging child detention since sponsors are afraid to come forward out of concern about immigration consequences for themselves or a loved one.

Congress and the administration should utilize community-based, least-restrictive alternatives to detention (ATDs) that connect individuals with family members, faith-based hospitality communities, and local services to help them navigate the legal system. For example, the Family Case Management Program (FCMP) is effective and less expensive than detention, allowing people to be released, connecting them with legal counsel, providing case supervision, and helping with child care. The program is 99 percent effective at having families show up for check-ins and court appearances and also ensures departure from the United States for those who are not granted protection.

Families are the foundation of our communities. We implore the Trump administration to protect unaccompanied children and all asylum seekers, and we urge Congress to hold the administration accountable to meeting their legal obligations and to not inflicting more harm on these children and families.

Post-Hearing Questions for the Record
Submitted to Brian S. Hastings, Randy Howe, and Gregory Nevano
From Senator Kamala Harris

**“Unprecedented Migration at the U.S. Southern Border: The
 Exploitation of Migrants through Smuggling, Trafficking, and
 Involuntary Servitude”**

		n of Migrants

Question#:	1	
Topic:	Fraudulent Family Unit Standards	
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude	
Primary:	The Honorable Kamala D. Harris	
Committee:	HOMELAND SECURITY (SENATE)	

Question: Mr. Hastings testified that, under the Trafficking Victims Protection Reauthorization Act (TVPRA), the definition of a family unit is a parent or a legal guardian with an individual that is less than 18 years old. He further testified that, even if a particular family does not meet the formal definition of a “family unit,” the family is not necessarily considered to be a “fraudulent family unit.”

What standards does CBP apply to determine whether a “family unit” is suspected to be a “fraudulent family unit”?

Response: Based on existing federal law, including the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008, DHS policy states that a family unit is an alien parent(s) or legal guardian(s) and the alien child(ren) under the age of 18. These individuals within this unit are counted within CBP systems as family unit aliens (FMUA).

If family members are present, but they are not parents and legal guardians, the cases may be linked as a family group (e.g., brother and sister, aunt and nephew). Between or at a port of entry, if a juvenile under the age of 18 is accompanied by a relative that is neither the parent nor legal guardian as determined by a competent legal authority, the child’s parents are otherwise unavailable to take custody, and the child lack lawful immigration status in the United States, then the juvenile will be processed as an Unaccompanied Alien Child (UAC) and transferred to the Department of Health and Human Services as required by federal law. Accordingly, no family unit exists that does not consist of a verified parent or legal guardian who enters the United States at the same time as their biological or adopted child. UACs will be transferred to the Department of Health and Human Services.

Question#:	1
Topic:	Fraudulent Family Unit Standards
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

A fraudulent family unit is a group of aliens that identify themselves to be a family unit, however, through additional investigation using available tools (databases, interview, foreign contacts, etc), it is determined that the aliens do not meet one or more criteria of the family unit definition (derived from the definition of a UAC found in 6 U.S.C. § 279(g)(2)). CBP takes several steps to evaluate parent-child relationships to determine if they are genuine, including the review and authentication of documents, contacting the respective consulate, and conducting interviews and observation of the relationship between the adult and child. Where these steps are unable to resolve an existing doubt about parentage, CBP will generally separate a child from an adult. CBP makes these determinations based on the evidence before them at the time. Absent evidence to the contrary, aliens that present themselves as a family will be processed as such.

Question#:	2
Topic:	Potential Fraudulent Family Units
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: What percent (and number) of arriving families have included members who claimed to be in a biological parent/child relationship, were identified as a potential “fraudulent family unit,” and were ultimately determined to actually include a biological parent and child?

What percent (and number) of arriving families have included members who claimed to be in a non-biological parent/child relationship, were identified as a potential “fraudulent family unit,” and subsequently were found to be relatives by HHS and reunified?

Response: The U.S. Department of Homeland Security (DHS) defers this inquiry to the U.S. Department of Health and Human Services (HHS) as it relates to the number of children DHS separated and referred to HHS on the basis of unverified parent-child relationship for whom HHS subsequently verified the parent-child relationship.

Question#:	3
Topic:	Permission to Traffic
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: What percent (and number) of such “fraudulent family units” involved an adult and a child under the age of 13 who was unrelated to the adult?

Response: In Fiscal Year (FY) 2019, from October 1, 2018 through July 29, 2019, a total of 11 fraudulent families involving an adult and child under the age of 13 were identified. Of those 11 fraudulent families identified, two were designated as an unknown escort. Assuming “unknown” means unrelated, then two of the 11 fraudulent families may have been unrelated. This means that of the 11 fraudulent family units involving an adult and a child under the age of 13, 18 percent were unrelated to the adult.

Question: In what percent (and number) of these cases did the adult later claim to have received permission from the child's parent or legal guardian to bring the child across the border?

How many of these cases were referred for prosecution based on lack of parental permission to transport the child?

Response: There is no known indicator available to CBP that could answer these questions.

Question#:	4
Topic:	Child Recycling
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: What percent (and number) of such “fraudulent family units” involved so-called “child recycling,” where an adult brought an unrelated child across the border who had previously entered the United States and returned to their home country?

What percent of these cases have been referred to the relevant U.S. Attorney’s office for prosecution on trafficking grounds?

Response: CBP and U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) has no way of measuring the total numbers or full extent of family unit fraud or child recycling at U.S. ports of entry. As stated during ICE HSI testimony at this hearing, ICE HSI has initiated two ongoing national operations that address the issue of human smugglers using family units to facilitate their smuggling activities. These operations (Double Helix and Noble Guardian), as well as statistics related to them as of June 2019, were described in testimony during this hearing. Upon request, ICE HSI can provide updates on these initiatives and offer details relating to the scope and nature of these operations and the statistics they measure. However, even with an overview of those operations and their statistics, ICE HSI will not be able to determine the percentage or number of fraudulent family units involved in so-called child recycling as posed in this question.

Question: What is the current status of each case that has been referred to the relevant U.S. Attorney’s office?

What has been the outcome of each such prosecution that has been completed?

Response: DHS defers these inquiries to the U.S. Department of Justice.

Question#:	5
Topic:	Vulnerable Definition
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Under the policies governing the Migrant Protection Protocols (MPP), vulnerable individuals may be excluded from the program on a case-by-case basis. On July 2, 2019, Human Rights Watch published a report finding that CBP's decisions to include or exclude vulnerable individuals have been inconsistent.

How does CBP define a “vulnerable” individual for the purposes of determining whether an individual or family should be subjected to MPP?

Response: CBP does not use the term vulnerable populations with regard to amenability for processing under MPP. Amenability criteria is outlined in the MPP Guiding Principles. The following individuals are not amenable to MPP:

- Unaccompanied alien children,
- Citizens or nationals of Mexico,
- Aliens processed for expedited removal,
- Aliens in special circumstances:
 - Returning lawful permanent residents seeking admission (subject to section 212 of the Immigration and Nationality Act)
 - Aliens with an advance parole document or in parole status
 - Known physical/mental health issues
 - Criminals/history of violence
 - Government of Mexico or United States Government interest,
- Any alien who is more likely than not to face persecution or torture in Mexico, or
- Other aliens at the discretion of the Port Director

Determinations as to whether a migrant is not amenable to processing under MPP due to “special circumstances” are made on a case-by-case basis at the local level with supervisory review. There are no categorical exclusions based on any particular “special circumstance.” To the extent there are considerations for specific populations, the Port Director and Chief Patrol Agent of each individual location maintain their discretion to review each case on an individualized basis. CBP personnel rely on contract medical staff onsite to make objective determinations about immediate medical needs of MPP migrants and whether further emergent care is required.

If an alien who is potentially amenable to MPP affirmatively states that he or she has a fear of persecution or torture in Mexico, or a fear of return to Mexico, at any time during processing, that alien will be referred to a USCIS asylum officer to assess whether it is more likely than not

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Hearing:	Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude
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Committee:	HOMELAND SECURITY (SENATE)

that the alien will face persecution or torture if returned to Mexico. USCIS provides contract interpreters for aliens who do not speak English. Additionally, the USCIS interviews are non-adversarial and conducted separate and apart from the general public. If USCIS assesses that an alien who affirmatively states a fear of return to Mexico is more likely than not to face persecution on account of a protected ground, or torture, in Mexico, the alien may not be processed for MPP. Officers and agents retain all existing discretion to process (or re-process) the alien for any other available disposition, including expedited removal, NTA, waivers, or parole.

Question#:	6
Topic:	Waiting in Mexico
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Please provide the total number of individuals, including members of family units, who are currently waiting in Mexico under MPP.

Response: As of June 2019, 1,171 and 11,487 individuals that were found to be amenable to and were placed into MPP by CBP OFO and USBP, respectively, were still waiting in Mexico, for a CBP total of 12,658 individuals, though CBP cannot confirm whether or not those individuals remain in Mexico.

Question: Human Rights Watch reported that over 4,780 children have been returned to Mexico with their parents as of mid-May under MPP. As of the date of your response, how many individuals under the age of 18 have been returned to Mexico under MPP?

Response: From inception of MPP through June 25, 2019, CBP OFO returned 321 individuals below the age of 18 and USBP returned 3,788 individuals below the age of 18, for a CBP total of 4,109 individuals below the age of 18.

Question: How many of the individuals waiting in Mexico under MPP are pregnant?

Response: CBP does not know how many individuals waiting in Mexico under MPP are pregnant. Not all pregnancies are disclosed to CBP and it is possible that women have become pregnant while waiting in Mexico after being placed into MPP.

Question: How many of the individuals waiting in Mexico under MPP are nursing mothers?

Response: CBP does not inquire with women as to whether or not they are currently nursing, and, therefore, does not know the number of nursing mothers currently in Mexico under MPP.

Question: How many of the individuals waiting in Mexico under MPP have known medical conditions or disabilities other than pregnancy?

Response: From May 1, 2019 through July 29, 2019, CBP returned 38 individuals, with known medical conditions or disabilities other than pregnancy to Mexico under MPP.

Question: How many of the individuals waiting in Mexico under MPP are LGBT?

Question#:	6
Topic:	Waiting in Mexico
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Response: CBP does not inquire as to a migrant's sexual orientation during routine processing, therefore, CBP does not know how many LBGTI individuals are currently waiting in Mexico under MPP.

Question#:	7
Topic:	Homeless in Mexico
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: How many individuals returned to Mexico under MPP subsequently became homeless?

Response: This is not information that DHS tracks or maintains.

Question#:	8
Topic:	Children to ORR
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: In how many cases has an adult been returned to Mexico under the MPP, but a child with whom the adult was traveling was sent to Office of Refugee Resettlement custody?

Response: When CBP encounters an alien family unit (consisting of either one or two parents/legal guardians), CBP will not separate the child from either parent/legal guardian unless the specific criteria provided in CBP's June 27, 2018 Interim Guidance on Preliminary Injunction in Ms. L v. ICE are met. With the appropriate approvals, CBP officers/USBP agents can separate where a parent/legal guardian is being referred for a felony prosecution, the parent/legal guardian presents a danger to the child, the parent/legal guardian has a criminal conviction(s) for felonies or violent misdemeanors, the parent/legal guardian has a communicable disease, or CBP clearly establishes that the familial relationship is not bona fide. The criteria to separate a child from a parent/legal guardian would also render the alien not amenable to MPP. Therefore, no separated parent has been returned to Mexico with the child remaining in the United States. But note, in some cases, after being placed into MPP with their families, children cross the border to the United States unaccompanied. DHS has referred these children to HHS as UACs.

Question#:	9
Topic:	Fear of Return
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS policy provides for a screening process to ensure that individuals are not involuntarily returned to Mexico if they are “more likely than not” to be persecuted on account of their race, religion, nationality, membership in a particular social group, or political opinion.

What percent (and number) of individuals have affirmatively expressed a fear of returning to Mexico at the time of initial enrollment in MPP?

Response: U.S. Department of Homeland Security (DHS) policies provide for a screening process for those aliens amenable for return or returned to Mexico pursuant to the Migrant Protection Protocols (MPP), to ensure that aliens are not returned to Mexico if they are more likely than not to be persecuted on account of their race, religion, nationality, membership in a particular social group, or political opinion or to be tortured. Since the beginning of MPP through December 30, 2019,¹ approximately 2,690 aliens subject to MPP asserted a fear claim and received an MPP fear assessment at the time of initial processing.

Question: What percent (and number) of those individuals have been screened by USCIS and been disenrolled from MPP as a result of that screening?

Response: Since the beginning of MPP through December 30, 2019, approximately 10 percent (265) of the aliens who affirmatively expressed a fear at the time of initial enrollment in MPP established that it was more likely than not that they would be persecuted or tortured in Mexico and therefore could not be returned to Mexico. Accordingly, these 265 individuals were not returned to Mexico.

Question: What percent (and number) of individuals have affirmatively expressed a fear of returning to Mexico after at least one return to Mexico?

Response: Since the beginning of MPP through December 30, 2019,² USCIS has received 9,438 MPP fear referrals of aliens who claimed a fear of return to Mexico after at least one return to Mexico under MPP. This constitutes approximately 17 percent of more than 56,000 returns to Mexico under MPP during the same time period.

¹ USCIS has tracked MPP fear assessments since implementation on January 28, 2019. Aliens subject to MPP may express a fear of return at any time they are in the United States, but USCIS did not specifically track whether the MPP fear assessment occurred as a result of an initial apprehension or return for an immigration court hearing until July 3, 2019.

² See *id.*

Question#:	9
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Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: What percent (and number) of those individuals have been screened by USCIS and been disenrolled from MPP as a result of that screening?

Response: Of the 10,929 MPP fear assessments U.S. Citizenship and Immigration Services (USCIS) has completed of aliens who claimed a fear of return to Mexico after at least one return to Mexico under MPP, approximately 10 percent (1,109) established that it would be more likely than not that they would be persecuted or tortured in Mexico and therefore could not be returned to Mexico. Accordingly, these 1,109 individuals were not returned to Mexico.

Question#:	10
Topic:	Disenrolled After Screening
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Exploitation of Migrants through Smuggling, Trafficking, and Involuntary Servitude
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: What percent (and number) of individuals have been disenrolled from MPP following the USCIS screening process?

Response: As of July 29, 2019, approximately 15 percent (243 of 1,661) of individuals referred to USCIS for a fear assessment under MPP have established that it is more likely than not that they would be subject to persecution or torture in Mexico and have been removed from MPP by CBP.

Question: What percent (and number) of individuals have been disenrolled from MPP for reasons unrelated to the USCIS screening process?

Response: CBP does not capture this data set in any system of record.


Answers to Specific Questions
Harris, July 16, 2019

1. How does CBP define a "vulnerable" individual for the purposes of determining whether an individual or family should be subjected to MPP?
 - a. There is no specific guidance on "vulnerable populations" as such a category does not exist under any existing MPP policy documents. To the extent there are considerations for specific populations, the Port Director and Chief Patrol Agent of each individual location maintain their discretion to review each case on an individualized basis. Aliens in the following categories are not amenable to MPP: unaccompanied alien children; citizens or nationals of Mexico; aliens processed for expedited removal; aliens in certain special circumstances; any alien assessed by a USCIS asylum officer as more likely than not to face persecution or torture in Mexico, or other aliens at the discretion of the Port Director/Chief Patrol Agent.
2. Please provide the total number of individuals, including members of family units who are currently waiting in Mexico under MPP
 - a. The total number of aliens placed into MPP from January 28, 2019 through August 18, 2019 is 35,122.
- 2a. Human Rights Watch reported that over 4,780 children have been returned to Mexico with their parents as of mid-May under MPP. As of the date of your response, how many individuals under the age of 18 have been returned to Mexico under MPP?
 - a. As of August 18, 2019, OFO has placed 600 juveniles into MPP who were members of family units. Unaccompanied Alien Children (UACs) are not MPP amenable.
 - b. Defer to USBP to speak on their numbers
- 2b. How many of the individuals waiting in Mexico under MPP are pregnant?
 - a. CBP does not capture this data as pregnancy may not be observable or disclosed.
- 2c. How many of the individuals waiting in Mexico under MPP are nursing mothers?
 - a. CBP does not capture this data.
- 2d. How many of the individuals waiting in Mexico under MPP have known medical conditions or disabilities other than pregnancy?
 - a. Aliens in the following categories are not amenable to MPP: unaccompanied alien children; citizens or nationals of Mexico; aliens processed for expedited removal; aliens in certain special circumstances; any alien assessed by a USCIS asylum officer as more likely than not to face persecution or torture in Mexico, or other aliens at the discretion of the Port Director/Chief Patrol Agent. To the extent there are considerations for specific

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Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Under the policies governing the Migrant Protection Protocols (MPP), vulnerable individuals may be excluded from the program on a case-by-case basis. On July 2, 2019, Human Rights Watch published a report finding that CBP's decisions to include or exclude vulnerable individuals have been inconsistent.

How does CBP define a “vulnerable” individual for the purposes of determining whether an individual or family should be subjected to MPP?

Response: CBP does not use the term vulnerable populations with regard to amenability for processing under MPP. Amenability criteria is outlined in the MPP Guiding Principles. The following individuals are not amenable to MPP:

- Unaccompanied alien children,
- Citizens or nationals of Mexico,
- Aliens processed for expedited removal,
- Aliens in special circumstances:
 - Returning lawful permanent residents seeking admission (subject to section 212 of the Immigration and Nationality Act)
 - Aliens with an advance parole document or in parole status
 - Known physical/mental health issues
 - Criminals/history of violence
 - Government of Mexico or United States Government interest,
- Any alien who is more likely than not to face persecution or torture in Mexico, or
- Other aliens at the discretion of the Port Director

Determinations as to whether a migrant is not amenable to processing under MPP due to “special circumstances” are made on a case-by-case basis at the local level with supervisory review. There are no categorical exclusions based on any particular “special circumstance.” To the extent there are considerations for specific populations, the Port Director and Chief Patrol Agent of each individual location maintain their discretion to review each case on an individualized basis. CBP personnel rely on contract medical staff onsite to make objective determinations about immediate medical needs of MPP migrants and whether further emergent care is required.

If an alien who is potentially amenable to MPP affirmatively states that he or she has a fear of persecution or torture in Mexico, or a fear of return to Mexico, at any time during processing, that alien will be referred to a USCIS asylum officer to assess whether it is more likely than not

- 6a. What percent (and number) of those individuals have been screened by USCIS and been disenrolled from MPP as a result of that screening?
 - a. [CBP respectfully defers to USCIS.](#)
7. What percent (and number) of individuals have been disenrolled from MPP following the USCIS screening process?
 - a. [CBP respectfully defers to USCIS.](#)
8. What percent (and number) of individuals have been disenrolled from MPP for reasons unrelated to the USCIS screening process?
 - a. [CBP does not currently capture this data.](#)

**ROUNDTABLE UNPRECEDENTED MIGRATION
AT THE U.S. SOUTHERN BORDER:
BIPARTISAN POLICY RECOMMENDATIONS
FROM THE HOMELAND SECURITY ADVISORY
COUNCIL**

WEDNESDAY, JULY 17, 2019

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:18 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Portman, Lankford, Scott, Hawley, Peters, Carper, Hassan, and Rosen.

OPENING STATEMENT OF CHAIRMAN JOHNSON¹

Chairman JOHNSON. Good morning. I want to call this business roundtable to order.

I want to thank the participants for taking your time and, first of all, for just working on the Homeland Security Advisory Council (HSAC) and, from my perspective, producing a really good report, a really good basis for, hopefully, legislation that we could pass on a bipartisan basis, but prior to that working with us to try and accomplish something to start addressing this tremendous problem.

We just keep upping this thing. The top-line number is down a little bit because June is reduced a little bit from May because I was projecting this out based on the most recent month. Based on May's numbers, the total number of individuals coming in here is either an unaccompanied alien child (UAC) but primarily as a family unit. It was over 800,000 projection. Now it is just over 700,000.

But one thing I have been pointing out, since 2014, these bars represent currently 5 years, 9 months, 1,086,000 people coming in this country illegally, being apprehended. Most of them are coming as a family unit, about 822,000, and of that 822,000, we have returned a whopping 12,021 individuals, even though I know in your report, you talk about 15 percent of people having a valid asylum claim.

So this is a clearly broken system. We are trying to grapple with it. That is what you are trying to do.

¹The prepared statement of Senator Johnson appears in the Appendix on page 381.

I am really pleased to have at the roundtable, four individuals who have been working on the Homeland Security Advisory Council. I will quickly read your names and a quick bio here, and then we will just go.

Do you want to start with—

Mr. AHERN. Start with Karen.

Chairman JOHNSON. Start with Karen? OK. So you have it all worked out, and again, take the time you need, but we have Karen Tandy.

By the way, the reason we do this in a roundtable too is it is just a more free flow of information. Feel free to interrupt, but I want to stay on the same theme. If you do it in a hearing form, it is one Senator, 7 minutes, and they kind of go through their own questions. And you just get disjointed. I just think this is a better way of opening up the discussion here.

But we have Karen Tandy, who formerly served as Administrator of the Drug Enforcement Administration (DEA). Ms. Tandy also is a former Associate Deputy Attorney General (AG) for the Department of Justice (DOJ).

Sitting to her right is Jay Ahern. Mr. Ahern is Principal and Head of the Security Services at The Chertoff Group. Mr. Ahern also served as a former Acting Commissioner of U.S. Customs and Border Protection (CBP).

Sitting to the left of Ms. Tandy is Dr. Sharon Cooper, a development and forensic pediatrician at the Womack Army Medical Center. Dr. Cooper also holds faculty positions at the University of North Carolina, Chapel Hill, Department of Pediatrics and the Uniformed Services University of Health Sciences.

And then last but not least, Leon Fresco. Mr. Fresco is a partner and immigration attorney at Holland & Knight law firm. Mr. Fresco also served as the Deputy Assistant Attorney General for the Office of Immigration and Litigation at the Department of Justice Civil Division.

My final comment is the Homeland Security Advisory Council literally is a bipartisan group. I think you have members—first of all, policy experts in a variety of areas but also spans the political spectrum, and you have come together and produced a solid product.

So, with that, I will turn it over to Ms. Tandy.

Oh, I am sorry. Gary, do you have any comments?

Senator PETERS. No, that is fine.

Chairman JOHNSON. Are you sure?

Senator PETERS. Yes. Let us hear from the panel.

Chairman JOHNSON. OK.

TESTIMONY OF HONORABLE KAREN TANDY, CHAIR, CUSTOMS AND BORDER PROTECTION FAMILIES AND CHILDREN CARE PANEL, HOMELAND SECURITY ADVISORY COUNCIL

Ms. TANDY. Thank you, Chairman Johnson, Ranking Member Peters, and Senators of the Committee. We are grateful for the opportunity to share our interim report¹ and to have that discussion today.

¹The interim report referenced by Ms. Tandy appears in the Appendix on page 388.

You have before you 4 members of the 10-member Homeland Security Advisory Panel that was created in October 2018. At that time, the 10 of us were given direction by then Secretary Nielsen of the Department of Homeland Security (DHS) to make findings and recommendations on CBP's care of families and children at the border, recommendations on best practices, training, policy changes, and any legal changes that were needed for the care of families and children at the border.

From December through March, this panel went to multiple places along the Southwest Border. We spent multiple days on each trip. We went to every State along the Southwest Border and to six of the nine Border Patrol sectors. That included 10 U.S. Border Patrol stations, four ports of entry (POE), as well as a variety of facilities where children were being cared for.

Over the period of our work leading from October up to April, we received briefings from 109 subject-matter experts. We reviewed a prodigious amount of material and data and spoke to non-government organizations (NGOs), medical professionals, government officials, and a variety of other experts.

Very early on, this panel certainly drew the conclusion that the immigration system is overwhelmed and fractured at every critical point. The tender-age children, especially children below the age of 12, are at the heart of this crisis.

The primary issue that was clear to this panel was the result of a shift in immigration, one that went from what was predominantly single males and processing and facilities for predominantly single males that completely shifted to a more than 600 percent increase of children, and family units. Typically, a family unit would be one adult and a tender-age child, 12 and under. That is a family unit. The shift was for these family units and unaccompanied children to come from Central America. That was the critical stage of what became the ultimate major stress in the immigration system and our crisis at the border.

What happened was children were endangered. They were endangered during the 1,200 to 2,000 mile journey to our Country. They were endangered during the crossing, and children were preyed upon. They were preyed upon by smuggling organizations. They were preyed upon by drug trafficking organizations and by others who were benefiting and making money off of their attempt to get into the country.

The overwhelmed DHS and the Department of Health and Human Services (HHS) capacity to care for these children was another result of the fractured system. Customs and Border Protection exercised and continues to exercise valiant efforts to deal with this crisis. It is outside of their training. The humanitarian piece of this is outside of their training. It is beyond the capacity of their facilities and until recently beyond their funding.

As a result, our national security has been endangered with, at any given time, as many as 4 out of 10 Border Patrol agents who are no longer performing their border law enforcement mission. They are instead doing the things they were not trained to do, which is providing the humanitarian relief to the best of their capacity.

At this time, if I could have the graph presented?¹

I think this depicts, more closely than anything, the crisis. This is a graph of family units that were apprehended by Border Patrol.

When this panel started in October, there were less than 17,000 family units apprehended at the border, and I am talking about between the ports of entry, the remote areas of the border, the uninhabited parts of the border. That went from October to April, instead of less than 17,000 family units that were apprehended, we were now up to 58,000 a month that were apprehended. By the next month, it was peaking at 84,000.

Why that graph is so important is that it shows you how the crisis escalated and the surge of these family units that require such special care and attention.

You can see currently in June, the numbers have actually dropped. Even at the June numbers, if is at the same level as when this panel filed our report in April, and we deemed it an emergency then. This is not our final report. We did not plan to file an interim report. We were so alarmed at what we saw at the border, the conditions at the border, that we determined an emergency report was required.

During this fiscal year (FY)—again, the number of children who are apprehended between the ports of entry in these remote areas was 266,657. These children have illegally crossed the border in between the ports of entry. That is a staggering number and why this is so important that changes are made, and made quickly.

This panel, all 10 of us, parked our politics at the door. We are bipartisan, as the Chairman pointed out. We parked our politics and unanimously arrived at our recommendations in this report. Each recommendation is integrated with the others, and standing alone, any one of them is not a panacea to turning this crisis around.

But we do urge the Congress to take action. We are pleased that Congress took action on supplemental funding at the end of June. It was critical, and now we urge Congress to make the other changes that we recommended in the report.

Thank you, Mr. Chairman, Mr. Ranking Member.

Chairman JOHNSON. Thank you, Karen.

Who is going to go next? Jay. My recommendation is just bring that microphone a little bit closer to you, and then you can turn them off because I think only so many work at the same time.

TESTIMONY OF JAYSON AHERN, VICE CHAIR, CUSTOMS AND BORDER PROTECTION FAMILIES AND CHILDREN CARE PANEL, HOMELAND SECURITY ADVISORY COUNCIL

Mr. AHERN. Got it. I may not be quite as soft-spoken as Madam Chair.

Ms. TANDY. Oh, I have never been accused of that.

Mr. AHERN. But thank you for the opportunity to be here this morning.

I have the opportunity and the pleasure to serve as Karen's vice chair of this panel and was appointed to the Homeland Security Advisory Committee by Secretary Nielsen almost a year ago.

¹The chart referenced by Ms. Tandy appears in the Appendix on page 426.

I come from perhaps a different perspective than many others on our panel. I actually served in Customs and Border Protection for 33 years and predecessor organizations as well. When I look back over the 33 years that I actually spent in government before I ended up leading the agency for the last 4 years as the Deputy Commissioner, then as the Acting Commissioner at the end of the Bush Administration and through the first full year of the Obama Administration, I must say that I am just very stunned and very concerned about the transformation that happened at our border.

When I take a look back at what we used to deal with years ago, starting in the mid-70s when I first came on board, we were confronted with challenging environments of dealing with people who try to escape and evade and avoid apprehension.

Today we are seeing people that are rushing to the first person they see in a uniform to surrender themselves. You have to ask yourself why is that. Why is that? I think the answer is pretty obvious. It is because of the broken immigration system that we have to go ahead and deal with today that need some other changes.

When you take a look at some of the family units that we have seen and unaccompanied children—by the way, I have not seen the recent numbers, but they are well into the 4- and 5,000 range of unaccompanied children who have actually been recycled by smuggling organizations for the purpose of being able to be conveyed across the border so that they will have an advantage in the process to be able to go ahead and be put into quick release proceedings, to be able to set up for a hearing that may happen years later. That is a concern.

When you take a look at the challenges that many of these families have as they are making their way to the border and all the challenges and all the horror stories that have actually been conveyed, I think those are certainly significant issues that need to be addressed, and we will talk about some of those things on the push factors that are occurring in some of those countries where we will have an opportunity to go in a couple of weeks to spend a few days in each one of the Northern Triangle countries.

But we have dealt with some of these challenges in the past. We have dealt with immigration surges over the years, whether it be some of the Cuban migration issues in South Florida with the Mariel Boatlift right at 1980, or some of the challenges we had when I was still working over 10 year ago in government with the Brazilian crisis, when we were surging in the amount of Brazilians that were trying to gain entry illegally in the United States.

It kind of shifted from the traditional Mexican population of people trying to gain entry to a group of Brazilians, and some of the same expedited removal proceedings and return-to-Mexico proceedings that were allowed under law at the time were not the same for people from other than Mexico and dealing with the Brazilian population. There needed to be swift action to go ahead and put them in removal proceedings, and guess what? It stopped.

I think those types of circumstances, we need to consider today because the challenges that we focus on today, unfortunately, are the things that get characterized in the media every night, and there are some very tragic circumstances. You can see each one of those, but unfortunately, the agency I had the opportunity to lead

for many years gets judged by the one-off circumstances that occur, not the daily circumstances and the challenges they have to deal with on a daily basis.

Some of those things are very important, and that is where I get very concerned about the mission of Homeland Security.

I had the pleasure and the honor to serve with Tom Ridge and Governor Hutchinson when we started to stand up the Department of Homeland Security, right after the President signed the Homeland Security Act in 2002, and we had all of 4½ months to stand it up on March 1, 2003. It is still maturing years later, but it was brought about to go ahead and secure the homeland. What deeply troubles me today is that it has actually turned into the immigration agency of this Country, and that is a concern. It should be a concern for all the Members of Congress, both sides of the House and both parties, because what deeply concerns me is what is happening to the rest of the mission.

I really applaud a lot of the efforts that are going on with the frontline officers and agents securing the homeland as best they can but having to consume their time dealing with the humanitarian crisis that is right in their face and they have to deal with.

But what else is happening? We saw when we were there, right at the shift change, where migrant families were coming in surges to go ahead and distract the Border Patrol from the drug interdiction mission, as the cartel members, who also are profiting by moving these people across the border, take advantage of that surging and capitalizing on the agents being consumed with having to manage that with them running their drugs right to the left and to the right.

We cannot let that happen as a country. We have to continue to focus on all aspects of the mission. There are still bad people trying to get into this country. Many of them do come across the Southwest Border. It is not all people from the Northern Triangle countries. These are issues we need to deal with as a body, whether it be the administrative branch, the legislative branch, and certainly, we need to make sure that those who are charged with setting the laws and executing those laws have the best capabilities they have to be successful.

Ms. Tandy mentioned that the supplemental was certainly very helpful. I would say it came too late. The agencies within DHS and many within DOJ and HHS had to exhaust their budgets just to be able to keep up with some of the challenges that they needed to be able to procure things for people.

They are hundreds of millions of dollars in debt before the supplemental, and I hope that it actually helps recover some of the budget so that none of them are anti-deficient. As an agency head, that is the last thing you ever want to have happen, but there was the challenges they were doing to deal with the mission. That was first and foremost for them.

When you see and hear the stories of they are given warmed-up burritos in a microwave, why is that? The procurement laws, that they had to go and acquire things, and the budget was not there to support what they needed for the mission, and the frontline people actually went out and procured it with their own funds, with

their own capabilities to be able to do the best they could, given the circumstances they had.

The processing facilities at a border patrol station—for those of you that are here, you know that; for those that are listening and watching here in the audience—think of it as a police station. There are cells to do immediate processing after somebody has been arrested, not for long-term detention, but given the entire process, take a look at it as a continuum or as a supply chain is broken because every step of that process needs to be reevaluated, reassessed, and improved.

So, yes, it is a process improvement, but also legislative change needs to occur to be able to make it better. It is not just what happens at the Border Patrol station with the intake and they have up to 72 hours, but as you take a look at then when one moves into Immigration and Customs Enforcement (ICE) detention and then all the other things that have to happen with HHS housing for family units or the administrative judges that need to provide the hearings, this system just backs up tremendously. The most obvious point and the visible point is at those Border Patrol stations and then at the ICE detention facilities.

Every step of this process needs to have review, and it is not just more about adding more Border Patrol agents or building a wall or things of that nature. It is taking a look at the entire process end to end, giving them laws to be able to be effective, giving the appropriate level of support for the administrative judges, the bed space that is needed to be able to house people throughout the entire process, but also evaluating what is the cause and effect here.

The push factors are very important. As we have looked at intelligence reports and some of the data from people that have actually been interviewed upon arrival, it is not for fear of persecution. I am sure there are many people that are, but we have had intelligence briefings from people that are involved with doing deep study and analysis.

The murder rates, the violence rates have not changed that dramatically in the last 5 years. The agricultural situation because of the drought has. The economic situation has because of corrupt governments in those Northern Triangle countries where people have lost complete confidence in their country, and they are looking to go ahead and find better opportunities elsewhere. When you flip to then the interviews of why here, education, medical, the opportunity to be reunited with family that is already here illegally, and also more confidence in our government.

Building the capacity and the trust and confidence in those locations where they live and where they likely want to be, if it were not for those other circumstances, is a key part of this going forward, but at the same time, we got to fix some of the push, the pull factors on our end. That is the legal system, and that is some of the things that required statutory change.

So I will end there.

Chairman JOHNSON. Thank you, Jay.

TESTIMONY OF LEON FRESCO, MEMBER, CUSTOMS AND BORDER PROTECTION FAMILIES AND CHILDREN CARE PANEL, HOMELAND SECURITY ADVISORY COUNCIL

Mr. FRESCO. You want me? OK. Thank you, Senator. Thank you, everybody.

I will just be very brief and just say I think I associate myself with the comments of my colleagues, and this was a bipartisan report.

I think one of the key things to focus on moving forward into how we get to actual solutions is to say I think we need to define the problem. I think people are disagreeing on what the problem is, and it is valid to disagree because depending on how you view this, there could be three different problems.

Problem one could be I want to eliminate the total number of crossings, period, through the border. I do not care what the purpose is of the person who is crossing. I just want it to all go away. That is one way to define the problem.

A second way to define the problem would be I want to take the group that is coming into the United States and successfully vet who is coming here as a refugee, and if you are a legitimate refugee, allow you to come and enter the United States, or if you are not a legitimate refugee, then remove you from the United States. So that would be a second way of defining this.

A third way would be it does not matter to me why you are coming. I just want that bad things do not happen to you when you arrive in our custody, and that is it. That is a third way of looking at this.

And so at least from my point of view, I was working with my colleagues to try to come up with this second option of how we successfully vet people in a manner where people who are coming with legitimate refugee claims can come in a very quick fashion, be assessed. We know who is coming for the purposes that the law permits and who is coming for the purposes the law does not permit, and that they are treated compassionately while that vetting process is occurring. I think if you have that as your goal, it is easiest to get to a bipartisan consensus. Whereas, if your goals are the others, this is where it becomes a more problematic formulation.

So that is the frame of approach that at least if people want to ask me questions where I am coming from on this, it is how do we take the population that is coming, make sure that they are treated in a compassionate manner while we vet, to decide if the reasons they are coming are reasons permitted under our law or reasons not permitted under our law.

Chairman JOHNSON. Thank you, Leon.

Doctor, again, get the microphone as closest as you can. There you go.

TESTIMONY OF SHARON W. COOPER, M.D., FAAP, MEMBER, CUSTOMS AND BORDER PROTECTION FAMILIES AND CHILDREN CARE PANEL, HOMELAND SECURITY ADVISORY COUNCIL

Dr. COOPER. Thank you very much.

As a pediatrician of now more than 40 years and who worked first as a military officer retiring from Fort Bragg, where we have

the largest pediatric population in the Army, it was an honor to serve with this Committee.

I must say that the challenges for children are severe and significant. At this particular time, there are more than 67,000 minors who have been present at the CBP station and have come across the border in that manner.

As our report reflects, many of these challenges reflect the fact that there are communicable diseases, which can be fatal and have been fatal for several of the children who have come across the border.

Whenever you have children that are in groups such as this, the risk for influenza, for example, which has been one of the primary causes of death for many of the children who have come across the border, has been very difficult and great.

I think it is very relevant that in reviewing the mortality cases that we have already seen, the overwhelming majority of these children were seen at medical treatment facilities and were sent back to the border stations and unfortunately succumbed to diagnoses that were not clear when they were seen by medical treatment facilities.

Another part of our report has to do with the identification of these children as being biologically related to the parents, the individuals who are cited as parents when they come in as a family unit. Having appropriate biometrics was a real challenge in our discussion as a committee because of some of the existing restrictions with respect to facial photographs and things of that nature.

So we have made some recommendations in our report on trying to make sure that the children who are going to be coming across the border and released to the interior are going to, in fact, be children who are going to be cared for.

The issue of recycling of children brings us to the risk for sex trafficking and labor trafficking of children and trafficking in general.

Because I am a forensic pediatrician, I work quite a bit with trafficking victims and circumstances of that nature, and that was one of my greatest concerns, which was affirmed when we had our first meetings regarding the risk of children who would be brought into the United States and then sent back to Central America to come back into the United States with different people posing as their parents. That kind of stress and trauma for children is untenable and will have, without a doubt, far-reaching psychological impact over the time that they are going to be continuing through their childhood.

Finally, I would want to say that the recommendations by the American Academy of Pediatrics (AAP) are excellent. They are relevant. They are available to any health care provider, free on the Internet, on all of the different medical problems and means of surveillance that should be taken, and that is really very helpful.

What we would really like to see as was recommended in our report, that there be onsite health care providers, rather than individuals who are not versed in the care of young children and adolescents. Because of the nature of the concentration of these children in these settings, it is very important that they not only be screened within the first 24 hours by a health care provider upon

arrival, but also may require rescreening, sometimes daily, if there are soft signs of potential infectious problems that we see in order to make sure that they can survive this last part of the journey that they have taken.

Thank you very much.

Chairman JOHNSON. Thank you, Doctor.

Just real quick on the point of health professionals, pediatricians at the border, both Senator Peters and I talked to Dr. Sally Goza, who is the incoming head of that organization, and I had talked to Mark Morgan that same day or the day after about facilitating whatever professionals want to get down there are willing to serve in that capacity to get that done. The Acting CBP Commissioner was very open to trying to work within the rules and laws, and who knows what bureaucratic hurdles may exist on that? But, again, very receptive to getting those pediatricians and those types of medical experts down there at the border to help alleviate or mitigate some of the problems.

Dr. COOPER. Yes. You are quite correct about that, and thank you very much.

One thing that I noticed—and we made recommendations for—was that initially in the smaller CBP stations, there was not really a location that was available for the right kinds of equipment, etc, but I think that that can be modified very readily.

In fact, when we got to the Clint Station, there was already a contract provider who had been hired to help facilitate evaluation of patients.

Chairman JOHNSON. Great.

Again, I want this pretty free flowing, but the order was Peters, Scott, Hassan, Rosen, Portman, Carper, Hawley. I really do want this free flowing because I totally schlepped over Senator Peters' opening.

OPENING STATEMENT OF SENATOR PETERS

Senator PETERS. That is all right.

Chairman JOHNSON. I will just turn it over to you. If you want to make any comments or state the questioning, go ahead.

Senator PETERS. Just the questioning. I want to pick up on, Dr. Cooper, your comments. The question I have been asking at all these hearings of folks is really how long is too long to detain a child, and I have never gotten a straightforward answer. What is your view, and what is the view of the folks here?

Dr. COOPER. The American Academy of Pediatrics feels and states that no time is a good time—

Senator PETERS. Right.

Dr. COOPER [continuing]. As far as detention is concerned.

Senator PETERS. Do you agree with that?

Dr. COOPER. My feeling is that you have to make sure once children have crossed the border that there is going to be a safe place for them to land.

You want to make sure that they are not going to be a risk of still being under the power and control of smugglers, for example, or people who are falsifying their identifications to increase the risk for these children. So once that has been ascertained, it would be very good not to have them in the herd circumstance, that you

have within detention because it will really foster a higher risk for infectious disease complications.

Chairman JOHNSON. Do you not have to define detention, though? What is harmful depends on what the facility is, right?

Dr. COOPER. Yes. Let me respond to that.

I have visited two detention settings. In one particular detention setting, the setting was with families, family and children, and what we found was that at that particular setting, which was in Dilley, Texas, it was an extraordinarily excellent location.

These families had their own individual apartments, if you will. There was a dining facility with very excellent food. There was education, a school situation from kindergarten to 12th grade, provided for them. There was recreational space for them, and there was also medical care, extremely good medical care that was provided by the United States Public Health Service onsite. That is a setting that would be the most ideal.

Senator PETERS. But that is not typical what folks are confronting right now.

Dr. COOPER. No, that has not been what we have seen in—

Senator PETERS. What I have seen looks very different from what you just described.

Dr. COOPER. Right. The Inspector General's (IG) report certainly revealed that that was not the typical, but that would be the desired type of setting.

Senator PETERS. That has to be the goal.

You talk about screening of folks, which is important to have professionals there onsite.

Dr. COOPER. Yes.

Senator PETERS. I know the report talks about telemedicine as a possibility, but talk to me about that. There has to be some limitations to telemedicine.

Dr. COOPER. Yes.

Senator PETERS. We need to have professionals actually onsite not doing it via telemedicine. I have some concerns about that, what I read in the report.

Dr. COOPER. So telehealth is a very acceptable method of care, depending upon the condition.

If you are looking at a child with respect to a potential infectious disease problem, your telehealth capability has to be very good because many of these children present with rashes, for example, that will indicate that there is an infectious problem, such as measles or they may have mumps, etc., but influenza, which is our greatest concern, is going to only be diagnosed by febrile reaction and soft symptoms, even softer the younger the child. So those children by definition need not to remain in a detention setting nor should they remain in a CBP setting. They need to be taken to a medical treatment facility without doubt.

Other types of telehealth capability will offer itself as long as you have a good health care provider to describe what is going on or a para health professional extender, such as a nurse or a paramedic who can give other information; for example, trauma injuries that may have occurred to a child.

Some of the other children who have died—at least one child died from really severe congenital heart disease, and in that situation,

telehealth will not be beneficial, except to affirm the need for immediate transfer for a patient like that.

Senator ROSEN. Can I ask a question about this? So we know that health screenings are supposed to go on, but right now they are going on by CBP officers instead of health professionals.

Dr. COOPER. Definitely not the right outcome.

Senator ROSEN. So is not a medical professional what we need to provide these screenings as often as they need to be done on a daily basis?

I can tell you I am suffering from a summer cold. Two days ago, I did not have it, and today I am taking all kinds of medication and trying not to spread my germs.

Chairman JOHNSON. Josh, if you want to move—— [Laughter.]

Senator ROSEN. Right. So we know how rapidly.

How quickly do you think the American Academy of Pediatrics—I had them in my office. We know that we have health care professionals willing to go down, willing to go to the border, willing to volunteer their time at these facilities. What do we need to do to facilitate that for the safety of our children?

Dr. COOPER. Absolutely, Senator Rosen. I agree with you 100 percent.

To have a pediatrician would be the very best recommendation that I could make, and you are absolutely right. Daily evaluation of children is indicated because they are in a high-risk setting.

Senator ROSEN. Keeping them in these crowded conditions is not something that is safe, even for the CBP workers that are working there.

Dr. COOPER. But especially for the very young children, you do not want to have them——

Senator ROSEN. Right.

Dr. COOPER [continuing]. In that setting. You would like to get them out of those settings, and you would like to make sure that you are going to have health care providers who can see them on a regular basis.

Chairman JOHNSON. Real quick, when we were down at the border, it was the Coast Guard corpsmen that were doing the initial testing. Is that your evaluation as well? Is that what you saw?

Mr. AHERN. Yes.

Chairman JOHNSON. Not the attritions, but their——

Mr. AHERN. Right. It is a mix, and depending as far as what facilities you are talking about, there are certainly some variances. I think, again, making the distinction between a Border Patrol station where the initial arrest processing, before they go into detention facilities, there are distinctions and differences that need to be recognized, like the particular type of stage or facility—and stage in the process.

I think I would also point to one of the key recommendations of our report, which is the regional processing centers, where you have the ability to have the right kind of facility with first, the right type of caregivers available to be able to have a triage upon entry into it by medical professionals, who would be stationed there, all the way through the court and the hearing procedures and second, the provisions for providing attorneys for people who need to go and appear before an immigration judge.

Being able to have that all in one concentrated location and probably three or four locations along the border and one in Guatemala is what we recommended.

Senator ROSEN. How quickly do you think that you can ramp up and do this? Because we have children suffering now, tender-age children, that they will suffer for the rest of their lives because of this, who came here—we cannot let children suffer because of whatever we may think of how they got there, who brought them here, or why they brought them here. The fact is they are here, especially the tender-age ones, not of their own choice, and so while all of the adults—we want to work together. We can talk about policy and procedure and all those things, but in the meantime, how quickly can we do something to protect these children who—

Mr. AHERN. It takes funding, and I would just ask you all to look at how long it took to get the supplemental funding approved. Those were months that were lost.

Senator ROSEN. But we did not have the funding because these children are risk.

Senator CARPER. But they did not.

Senator HASSAN. Right. But can I wanted to take a step back, and first of all, thank you all for being here and for your work.

I appreciate the work that the panel has done, and I understand as well that the Administration wants the ability to indefinitely detain families, and that the CBP Families and Children Care Panel prioritized that as a recommendation.

Doctor, I understand the concern about vetting families and making sure children are, in fact, related to the adults they come with, but let us just start with a fundamental proposition. Do you believe that the indefinite detention of children is harmful to children? And let us just go right down the line, all four of you.

Mr. FRESCO. Yes. Indefinite detention, I do not think would be any of our goals.

Senator HASSAN. Yes or no. Is indefinite—

Mr. FRESCO. Yes. Indefinite detention is harmful to children.

Senator HASSAN [continuing]. Detention is harmful to children? Yes or no.

Mr. AHERN. Certainly, it would.

Senator HASSAN. OK. Ma'am?

Ms. TANDY. We did not recommend indefinite detention.

Senator HASSAN. What I am trying to get is a shared set of values and understanding that we can then have a discussion based on, because if you lift the *Flores* limit, you are talking about the possibility of indefinite detention.

So is it or is it not? I am not just talking about exposure to communicable diseases here. Is it or is it not harmful to children?

Ms. TANDY. This panel found that a period of detention in the proper setting—which is not the current setting—was an important balance of the Nation's security, Customs and Border Protection's processing requirements, and the care of these children who arrive often ill and traumatized and—

Senator HASSAN. I understand that, but—

Ms. TANDY [continuing]. Being provided with health facilities and health care in a center that could be a detention center, but it is not parked in a detention center.

Senator HASSAN. So I would like to submit, Mr. Chair, for the record, a letter that a group of medical and child advocacy organizations led by the American Academy for Pediatrics sent to the panel.¹ The letter from these child health experts expresses strong opposition to the panel's recommendation to allow for the indefinite detention of children.

Here is what the letter said. This is just a quote: "Detention of children for even brief periods causes known and well-documented developmental, physical, and psychological harm. These impacts may be particularly pronounced for asylum seekers who have frequently fled severe violence and trauma in their countries of origin. Detention also poses significant barriers to accessing legal counsel to assist families in preparing and presenting their claims for legal protection."

So what is the response to this medical advice, and why does not your report reflect those findings? That is the question.

I will also say this is not an either/or. We can be secure and not harm children by indefinite detention, and both are really important priorities. This is a security issue and a humanitarian one.

Chairman JOHNSON. Let me first ask because I think—

Senator HASSAN. Yes.

Chairman JOHNSON [continuing]. It is incredibly important to make this point again. I do not know what definition "detention" that group is—

Senator HASSAN. Exactly.

Chairman JOHNSON. If they are looking at the Border Patrol stations, absolutely. I do not think anybody would say that that is not going to create harm, but if you are talking about Dilley, if you are talking about Donna facility, where you have the families there, that is a different type of situation.

Senator HASSAN. Senator, that is—

Chairman JOHNSON. But, anyway, we will enter that in the record.

Senator HASSAN. Detention of children, indefinite detention, putting them in an institutional facility, period, according to pediatricians and experts, causes them harm. It does not matter—obviously, better conditions are better, but it does not undo the harm. That is why in this country, unless we find an adolescent who has committed a crime or is harmful to themselves or others, we do not detain them because any detention is harmful.

What I am concerned about is we keep presenting this as either we have to detain kids or we are not going to have secure borders, and that is a polarity I reject and I think the U.S. Government could easily address.

Senator PORTMAN. Senator Hassan, can I speak briefly?

Senator HASSAN. Yes.

Senator PORTMAN. I just got back from the border on Friday, and I know that you are looking for a practical solution here.

Senator HASSAN. Right.

Senator PORTMAN. But I think what we are missing is why these children are coming in the first place, and under *Flores*, which is the recommendation—

¹The letter referenced by Senator Hassan appears in the Appendix on page 383.

Senator HASSAN. Right.

Senator PORTMAN [continuing]. You think *Flores* should still apply to unaccompanied children but not to the families with children.

It is definitely an incentive to come to America, and so you are—frankly, if you are focused on having a solution to the long-term detention, you should be focused on keeping these children from coming in the first place.

Senator HASSAN. Right.

Senator PORTMAN. There is no good solution here.

Senator HASSAN. Actually, there are—

Senator ROSEN. But what about the children who are there now?

Senator PORTMAN. Wait. Let me finish. Let me finish because you had a long time to talk.

Senator HASSAN. Right.

Senator PORTMAN. There is no good solution here unless you deal with the incentives because you are encouraging these children to leave their homes in Central America and to join traffickers to come to our border, or you are encouraging children—this report has said 4- to 5,000 kids have been recycled already. When I was down at the border, they had numbers that were higher than that.

They know who these kids are because they process them, and they process them again and process them again.

So I could not agree with you more. We do not want kids to be detained at all. That is not good for kids.

Senator HASSAN. Right.

Senator PORTMAN. But what is really bad for the kids is the U.S. Congress refusing to do the things that we all know that should be done—and I know you know should be done—to discourage them from making this long and dangerous journey in the first place, and that is what this report is getting at is as long as you have this notion that under *Flores* that a 20-day limit is place, and as long as you have a situation now where partly because they are overwhelmed, there is no way you can process these children or families within those 20 days. They are simply permitted to go into the United States.

They go to a nonprofit. The nonprofit gets them on a bus or an airplane, and they are in New Hampshire. They are in Ohio. Again, 15 percent at the end of the day according to this report and according to all the data we have are getting their asylum claims granted, if they do claim asylum. It is on average over 2 years, but really, as the report indicates, it is 4 to 5 years. The report also indicates that very few people are ever removed. That is what you said in your report.

So if you are a trafficker, this provides you the perfect opportunity to say to these kids and families, “If you pay me \$5,000 or \$10,000,” somewhere in between there, “we will take you up to the border and, frankly, just dump you at the border.” As we know, 30 percent of the women and girls, based on the best data we have, are sexually assaulted during that journey. I mean, this is the problem.

So we can talk about detention, and I could not agree with you more. We do not want to detain anybody, but the real issue is how

do you keep these kids from making this dangerous journey in the first place.

Senator HASSAN. That is right.

Chairman JOHNSON. You want to detain them to prevent them from going to a stash house or getting put in a sex trade situation or the egg farm. One of the alternates of detention is teaming back up with the human traffickers, who they have not paid their debt to, who are controlling their families down in Central America. So we have not focused enough on the human trafficking element and the danger these children are in if we do not try and protect them in some form.

Senator HASSAN. There are other solutions. There is short-term detention, which we process them through, and I do not want to dominate the discussion. But I do feel a couple of things that I want to clarify.

One is I would not say that it is the children themselves who are being incentivized to make these decisions. They are being exploited by a lot of different people, a lot of different conditions. So let us focus on—

Senator PORTMAN. But it is the laws and the rules.

Senator HASSAN. Let us focus on the incentives.

Senator PORTMAN. It is the laws and the rules.

Senator HASSAN. Let us focus on the incentives to the adults who then bring the children.

Second, the notion that the only way, then, to deal with this is to extend the *Flores* limit beyond 20 days or to let them go is a false choice.

There are other recommendations that other groups have made that indicate that we could in fact keep track of these families. We could case manage these families. We could surge our capacity so that the hearings could be held within 20 days. Those are all things we are capable of doing if we will provide the resources to do it, and that is my concern.

Chairman JOHNSON. Of course, that rapid adjudication is the whole goal of Operation Safe Return.

Mr. FRESCO. Right.

Chairman JOHNSON. But I would like to turn it over to Leon because you actually are an immigration lawyer. I think your proposed solution as part of this was that rapid adjudication, but we are also being told too that—and Operation Safe Return is only going to evaluate based on a credible fear standard because we do not have the time in 20 days to do the full adjudication process. Can you just talk about it?

Mr. FRESCO. Right.

Chairman JOHNSON. Also, talk about the basic asylum law and asylum standard.

Mr. FRESCO. So what is complicated is there are two completely different case tracks. There is what is called an “expedited removal track,” and there is a “normal track.” So the attempts to solve this problem have all been geared currently around the expedited removal track, which is where the government, if you do not express a credible fear, can immediately remove you.

The issue is most people express a fear of removal. So then you have to make this adjudication. Is that fear credible? And if it is, you can stay, and if it is not, then you can be removed.

The question that our panel had put to ICE—because this had been tried, both in the Obama Administration and in this Administration. We asked has any family, not 20, 30, or 1,000. Has any family been removed that has been placed in the expedited removal process? And their answer that they gave us was no.

I mean, I do not know if you guys remember that question.

Chairman JOHNSON. Let me quickly give you the numbers.

Mr. FRESCO. Yes.

Chairman JOHNSON. So since 2014, 822,000 individuals coming in as a family member, we have removed 12,021. That is 15 percent.

Mr. FRESCO. Yes. That is after they were—I am talking about through—

Chairman JOHNSON. It could be voluntary.

Mr. FRESCO [continuing]. Context of what they used the Family Removal Centers that they are using now.

So what we started to think about when we were thinking about that is, well, then what you are doing is if you are detaining anybody for any amount of time, you are wasting the time because you are not actually accomplishing a removal. The whole point of a detention would be to accomplish a removal in that situation, and you are not accomplishing a removal. Why are you doing the detention?

So there are two alternatives. You can either make changes to the expedited removal system, which I am not a big fan of—others are—or you can actually move people toward the real removal system, and it is my belief that the biggest delays you have in the normal removal system are you have to give people time to find counsel, which takes many months. And that is why you blow through all of these time limits, and you have to give people opportunities to get documents, which a lot of times they cannot get because they are fleeing their country.

In my view, if you give the people counsel on day one and you expedite the hearing and you establish the courts right there on the site and you say, “Unless the claim sounds incredible, we will deem it as credible. You do not need to get these documents,” because the underlying theory is that a lot of these cases do not qualify legally anyway for asylum. Then you can actually get these proceedings done in 20 or 30 days.

That is why when you say *Flores* extended, we will not saying extended from 20 days to 1,000 days. The question is if it will take 24 days, 26 days, something like that to get the proceeding done and you are holding someone in a facility that we can all agree is a facility that will meet whatever standards the policymakers thinks are good standards, then a lot of people will get asylum and will be able to stay in. A lot of people will not get asylum and—

Senator ROSEN. Can I ask one question? This is about adults. Who does the credible fear screening for minors, especially those tender-age minors?

Mr. FRESCO. The same U.S. Citizenship and Immigration Services (USCIS) officer who does the family, they do the whole family.

Senator ROSEN. But if they are unaccompanied?

Mr. FRESCO. Oh. If the child is unaccompanied, they cannot be put in expedited removal proceedings at all.

Senator ROSEN. So they are just held in these conditions?

Mr. FRESCO. No. What happens is they then go through the normal regular proceeding that I have talked about, which means CBP can only hold them for 72 hours, and after those 72 hours, they have a legal obligation to send them into the custody of the Department of Health and Human Services until that Department can find an adult who is capable of being their custodian.

And then the removal proceeding that I have just spoken about, the second track, will play out, and either they will win and they will be able to stay, or they will lose and they will be ordered—

Chairman JOHNSON. But they almost all stay.

Because I want to drill down this while we are on it. Talk about the disparity between the vast majority being granted the credible fear versus your report saying about 15 percent actually have a valid asylum claim and really would be subject to removal, although we are removing none. Just talk about that disparity and how that plays out in the few cases that actually are adjudicated, where it is not granted asylum.

Mr. FRESCO. Do you want me to?

Ms. TANDY. Go for it, Leon.

Mr. FRESCO. OK. So the problem is, you have different legal standards, and so the standard for achieving a credible fear standard, which is what you have to establish to get yourself out of expedited removal and into the normal removal process, is that there is a significant possibility that you have an asylum claim.

Asylum is defined, although in dicta, but in dicta that people talk about all the time in the Supreme Court law, about having a 10 percent chance you will be persecuted.

So what you have to show is you have a significant possibility of having a 10 percent chance of being persecuted, so it is a generous standard.

Chairman JOHNSON. Basically, you say, "I am afraid to go home" and—

Mr. FRESCO. It is a generous standard because that is the standard that was written. I mean, you can do that.

Chairman JOHNSON. I understand. So that is why they call it "credible fear." They say, "Hey, I am afraid to go home." OK, that is credible. Now you are into the process.

Mr. FRESCO. That is correct.

Chairman JOHNSON. How long is it, and what kind of evidence? What do they have to provide, and then why then at the very tail end only 15 percent would be granted asylum?

Mr. FRESCO. Let me say this. Having come from the Department of Justice where we were constantly having to re-correct our statistics in court, I am a little suspect on all of our statistics.

Chairman JOHNSON. I agree.

Mr. FRESCO. So let us just say I do not know what the statistics are, and if anybody claims to know what the statistics are.

Chairman JOHNSON. You are correct.

Mr. FRESCO. So we do not know what we do not know, but having said that, let me just say that it is a fair point that there are a large number of asylum claims that once presented do not meet

the standard, and the problem is because we do not know what the standard is currently being adjudicated in the courts right now.

It is unclear. We have no idea. The Supreme Court will eventually decide this.

Chairman JOHNSON. Just lay out the basic premise.

Mr. FRESCO. The basic premise is that people are making claims right now that they are going to be persecuted in their home country because of domestic violence concerns or gang concerns that their country is—and that is a different two.

So it is not clear whether those claims qualify or not for asylum. That is being worked on right now.

Chairman JOHNSON. That is what is being—

Mr. FRESCO. Yes.

Chairman JOHNSON. There are five basic—

Mr. FRESCO. Right. The five basic ways of getting asylum are race, religion, national origin, social group, or political opinion.

Chairman JOHNSON. As a social group, it is the—

Mr. FRESCO. Social group is the one that they are claiming, correct.

Chairman JOHNSON. Contentious one. I want to just lay this thing out.

Senator PORTMAN. One thing just quickly. Again, being down there on Friday, I learned something I guess I should have known, which is I talked to five or six families. At one point, I worked down along the border, so I used the best Spanish I had, and it was exactly what you would expect. People are saying they cannot get a job in Central America, the drought. Most of them were working in agricultural. One was not. A mechanic. One was in the tourist business. But they were saying they want a better life for their kids. Not a single family was saying anything about a credible fear.

I probed a little bit, and they did not. But I am told—and I guess I should realize this—that along the process—so these families will all be released within a couple of days of being in the processing center. I mean, there were a thousand families there. This was at Donna.

They will be released on their own recognizance. Along the process here, they can claim asylum at different points. So if they do get counsel, 6 months from now, they can claim asylum.

Mr. FRESCO. You would hope in every area where you have an officer of the court who is bound by law, not to produce fake asylum claims that they would not be producing—that a lawyer would not help someone to make—

Senator PORTMAN. Right.

Mr. FRESCO [continuing]. A fake asylum claim.

Senator PORTMAN. But is it true that some of them do claim asylum later in the process?

Mr. FRESCO. Well, you can. So here is what is complicated, what people do not realize about the expedited removal process. It is in order to use the expedited removal process, you actually have to have detention capability and USCIS officers who can do the credible fear screening. We do not have sufficient of either of those right now, which is what you are describing when people are released without even having the credible fear screening. They are

released to do what I called “track two,” the normal removal hearing.

When you have a normal removal hearing, at that point, the system does not know anything about you. It asks you, “OK. Do you concede to removal or not?” and if you say, “No,” they ask you what is your defense to removal. At that point, you could introduce a defense of asylum.

Senator PORTMAN. Which is at what time during the process?

Mr. FRESCO. That would be whenever you get that hearing. It could be 2 months or 3 months later.

Chairman JOHNSON. But, the process is so overwhelmed.

Senator PORTMAN. Is it typically 2 or 3 months later?

Mr. FRESCO. Yes, for the first hearing.

Senator PORTMAN. OK. That is what I thought.

Mr. FRESCO. And then depending on when the next trial is—

Senator ROSEN. Can I interject here, though? It seems to me we have two different issues. We have an immediate issue with all these children—

Mr. FRESCO. Sure.

Senator ROSEN [continuing]. At the border detained, whether you want to say cages or holding areas, whatever your definition is.

Chairman JOHNSON. There are 200 right now in Border Patrol stations, 200.

Senator ROSEN. That is the total number of children that are detained.

Chairman JOHNSON. Once they finally got the funding, it went from 2,000 down to a couple hundred, and again, they turned them—I just want to ask you. Do you have an average number of days in those Border Patrol facilities? And they are trying to do it in a couple of days, right?

Ms. TANDY. It is very hard to get a correct answer to that. The standard is 72 hours. If it is children, it should be 24 hours.

Senator ROSEN. So children are moved out of these cages in 24 hours?

Ms. TANDY. No.

Mr. FRESCO. No. That is the law. The law is 72 hours, and their goal is 24 hours. Yes.

Ms. TANDY. But bear with me in terms of the reality. Forget the standards because that is not what is happening.

Senator HASSAN. Right.

Ms. TANDY. What is happening is the surges of these people who are coming across, principally family units and children, have overwhelmed a facility meant to keep people for hours, not days, not weeks, and longer.

But what has happened is to move people out of these facilities. It is very difficult for Border Patrol to do full processing that they should be doing. They are attempting and they are trying very hard. But what is typically happening is that these people are given notices to appear (NTA). And they are released.

What used to happen is that, first of all, every part of the chain had the funding and space requirements to meet their obligations. So they did move in 24 and 72 hours, a year ago. What happened now is that it is backed up. HHS does not have the bed space. ICE

cannot take the people from Border Patrol unless they have someplace to put them through HHS.

Previously, there were travel plans that were actually accomplished by ICE. They would determine where the people were going. They would confirm the receiving entity at the other end.

Senator ROSEN. No, I appreciate it, but you are actually making my point that we have an immediate issue with children and families, how they are being held, and then we have a long-term policy issue of what we do going forward, either to deter it or to take care of them or to move it. So there are two different issues, one very immediate for the health, safety, and care particularly of tender-age children and families, and then we have the long-term policy issues that are—

Chairman JOHNSON. But what you are describing is that health care is all about the overwhelming nature of the flow. You have so many people—

Senator ROSEN. But you are not going to stop the flow in a day, Senator. So we have to get through what we are doing now to take care of—they are not these people. They are human beings.

Chairman JOHNSON. That is their recommendations. Jay.

Mr. AHERN. I think that is the point. You cannot disassociate the two. There is no one who would argue they do not need to do a better job in handling the kids within that first 24 hours, without question.

But the capacity of the system is so exceeded by the surge of people that have occurred because of the broken immigration this country allows to continue to happen. That becomes the focus that people want to look at, and not looking at what actually is happening in a Central American location. What happens in the interior of the United States?

Senator ROSEN. So even if we put a law in place today—

Mr. AHERN. In the interior of the United States, one of the things again—

Senator ROSEN. There is a backup.

Mr. AHERN [continuing]. This body would be questioning ICE is if they were releasing kids to sponsors here in the United States who were using them for sex trafficking or human trafficking.

Senator HASSAN. Right.

Mr. AHERN. There is a very deliberate exercise that goes on to make sure that they are not putting them back into the hands of those who are going to create more concern and more exploitation for these kids in the country.

No one is satisfied with the processing time. We can understand all the different influencing factors here that are causing challenges.

Chairman JOHNSON. But we were told these families are showing up at stash houses, and they are being beaten. The videotapes are being taken—

Senator HASSAN. Some of them, yes.

Chairman JOHNSON [continuing]. Down to Central America for ransom.

Mr. FRESCO. That is why we recommend these regional processing centers. That would have, in the short term, the medical, the legal, everything in there. So you could move them out of these

CBP facilities. That is why we recommended that we stand up these large regional processing centers as soon as possible to get people out of CBP and start moving the rest of this process.

Senator HASSAN. Which—

Senator LANKFORD. Mr. Chairman, can I jump in with a quick statement as well?

Chairman JOHNSON. Yes.

Senator LANKFORD. So reading through your recommendations on the *Flores* issue. Did you all have any conversation about what to do with 17 year old males? Because the highest number of people coming in right now as far as percentage are single males that are coming across the border claiming to be 17. I assume that they have been coached that if you claim you are 17, you will be treated differently. There is no papers or documentation, we do not know if they are 25 or if they are 17. They just come across and say they are 17. Did you all have any conversation on that? And then I have one more follow-up question on that as well.

Ms. TANDY. We had some. But the emergency nature of our report focused on fixing the biggest problem, which is the family units—

Senator LANKFORD. Right.

Ms. TANDY [continuing]. Not the unaccompanied, and 17-year-olds would be in the mix. So, we had some recommendations.

Our final report will address those types of concerns.

Senator LANKFORD. So the Trafficking Victims Protection Reauthorization Act (TVPRA), when I talked to foreign ministers and leaders in El Salvador, Guatemala, and Honduras, they all say the same thing to me, “We want our kids back.” It is a very odd statement to say—these kids cross the border, and if we had an American that entered into Guatemala, Americans would demand their child back. We have a child from El Salvador that comes, and we say, “No, we are going to keep them.”

Salvadoran minister was in my office yesterday saying, “We would like our kids back.” If they are an unaccompanied child from El Salvador, why cannot the Salvadoran government say, “Send them back to us. We will then repatriate them with their families”? We actually created a barrier on that instead of allowing them to be able to return back to their own country.

Did you all have any conversation about that?

Ms. TANDY. The subject of one of our recommendations was to amend the TVPRA—

Senator LANKFORD. Right.

Ms. TANDY [continuing]. To permit—

Senator LANKFORD. I saw it, but it had a parent to be able to—

Ms. TANDY. The United States to send them back to the custodial parent or a parent in their home country who wants them back.

Senator LANKFORD. Right. But what about the country itself as far as their embassy, there as a national entity to be able to say please send the child back? It is the same thing we would do. If a parent was here, a parent was not here, we would reach out to another country and say, “Send that American child back to us. We will take care of it.”

Dr. COOPER. But would not you have to make sure that child was going to be safe? If a child says the reason they are not there in

the first place is because they are not safe, certainly we would not want to send them back.

Senator HASSAN. If a gang is coercing the parent to requesting the child back.

Chairman JOHNSON. We are not ensuring they are safe here in America. We release about 79 percent of unaccompanied children to an undocumented person in America.

Dr. COOPER. But I would venture to say that our laws are such that they would be more likely to be safe.

Chairman JOHNSON. Oh, I completely agree, but I am saying this is no guarantee here in terms of what is happening.

Senator LANKFORD. It is just a strange anomaly that if a country says we want our child back, we basically tell them no at this point.

Mr. FRESCO. The complication, Senator Lankford, is the question is whether you are doing this systemically or individually, and what I mean by that is if you are doing it individually, what you have is you have a child presenting themselves individually saying, "I cannot go back to my family's home because my dad beats me"—

Senator LANKFORD. Right.

Mr. FRESCO [continuing]. "And it is an unsafe home." So even if the government is saying, "I want the child back," well, OK, government. Where are you going to put this child if we send them back to you? And so that is the problem. How do you deal with that individual claim versus how do you deal with a systemic claim?

I am not giving a recommendation. I am just going to say what the law says now is you have to then do a proceeding on what is in the best interest of that child. Is it to remain here with a guardian, or is it to be removed back?

Mr. AHERN. You will get a different answer from a foreign minister versus a parent who is kind of encouraging some of the kids to come north.

Senator LANKFORD. To come because they have a brother that is already here.

Mr. AHERN. The reasons to come north are for education opportunity, better health care, and whatnot.

Also, one of the other reasons for why, there is an awful lot of kids, thousands who are going back, is because sometimes as many as four or five kids at a time come north in the hands of a smuggler.

Senator HASSAN. Right.

Mr. AHERN [continuing]. These kids go back, then put at the starting line, and then brought back to the country again.

Senator LANKFORD. To come back again.

Senator HASSAN. Yes.

Mr. AHERN. That is unconscionable.

Senator HASSAN. Yes.

Mr. AHERN [continuing]. That is something we cannot let continue to happen in our country.

Senator HASSAN. That is true.

Chairman JOHNSON. So just real quick, Leon, when you made your opening statement, you defined the problem, and to a certain extent, you were kind of defining solutions.

The way I continue to talk about this is the problem is in the chart,¹ OK? From my standpoint, the initial—and this is the first step. The initial goal should be to reduce the illegal flow, to disincentivize families and children taking that dangerous journey.

What I am trying to do with Operation Safe Return is, first of all, tell human smugglers, on a bipartisan basis, “We are not going to allow you to exploit our laws anymore. It is going to take some time, but here is the initial first step.” The message to Central American families is “Do not. Please do not indebted yourself to the human smugglers. Do not mortgage your house. Do not pay them a year’s worth of salary.”

When I talk about indebted, one thing, we had the same conversation with the families on the border, and I was surprised at how many—and, again, you do not know what they are being told by the human traffickers, but I have not paid a human trafficker anything, which is a little concerning because they will have to pay, which is why they end up at stash houses, and they are going to have to work out their debt.

We had the Robert Kraft, the massage parlor story. The New York Times did a great job talking about Asian women, \$30,000 to \$40,000 indebted to human traffickers, and how are they paying it off? In the sex business.

So from my standpoint, the goal of our policy initially, the first step is we need to reduce that flow, and that is where I go to your recommendations in terms of how do we do that. Is that kind of what you are saying is the first step and why this is an emergency in your report?

Ms. TANDY. Absolutely, Senator. Integrated in all of our recommendations is to stem the flow so that these children are not placed in danger to begin with. Part of the recommendation to stem the flow is to give them a safe place to assert their claims in Central America, in Guatemala at a processing center.

If they continue to flow to the border and move with a notice to appear, if they file their claims, we may not see them again for years. So if that continues, it will just continue to pull these families in.

So we want them to be able to assert their claims and to do it in a humane setting. The best place to do that is in a safe place down there that we establish with international cooperation like Guatemala. So that we can save them from a terrible journey and terrible crossing into this country.

Chairman JOHNSON. Gary.

Senator PETERS. Yes. I want to pursue that because, obviously, we do not want to send folks back, children back to an unsafe place, they are fleeing. But now you are saying, “You have to stay in that place that you are fleeing while we process your claims,” which could take a long time.

Tell me more about the international effort to put them somewhere. You are talking about a refugee camp in Guatemala for folks? Because if they believe that they are being persecuted, attacked, or threatened by drug cartels, we have to keep them safe while we go through this process, I would think.

¹The chart referenced by Senator Johnson appears in the Appendix on page 382.

Ms. TANDY. So one of the panel members is a former U.S. Ambassador to Mexico in the Clinton Administration, and he was one of the principal proponents of establishing such a center. It does no good for the center to be on unsafe ground in Guatemala. So it has to be a center where there is an agreement with the government of Guatemala, where there is security provided, and where you would have all of the other types of support such as medical, security, welfare, asylum officers who would do the processing, judges, additional judges who would take care of the back end of the claim. All of that would have to be a concentrated effort.

Such a center does not exist, but there is a belief that it could exist with an international agreement with the government of Guatemala. It could be created, and it could stop the danger to these kids who are going through Mexico to get up here and then all of the ills that we have talked about that happened to them.

Mr. AHERN. Just to add to that, I think one of the things that, again, we get so focused on is what is happening at the initial Border Patrol station during that first 72 hours; whether it be 24 hours for children or 72 hours for adults, in the time they spend in ICE detention centers or before they go off to the HHS family centers.

We lose sight of the fact, first, the conditions that they lived with before they started this trek to the United States, and second, the horrific stories we have heard and seen from people along the way. Those things are really of concern. While certainly somebody could be cared for better, I do not agree with any of the current standards, and I think they all need to be improved.

Senator HASSAN. Yes.

Mr. AHERN. But let us not lose sight of the fact of what is happening in transit and the exploitation. We cannot scoff at that. That is something we have to go ahead and look at.

Chairman JOHNSON. I have never published on our website the folders I have of the dead, desiccated animal-chewed bodies—

Senator PETERS. We all understand that, that is horrible.

Chairman JOHNSON [continuing]. In counties both in Texas and—

Mr. AHERN. So what can we do to go ahead and stop the flow? What can we do to stop the push factors that occurred?

Senator PETERS. Right.

Mr. AHERN. That is going to take more patience than oftentimes the U.S. Government tends to show because that is an effort of capacity building.

Senator HASSAN. I think some of this is a discussion about capacity building—former Assistant Secretary of Homeland Security Juliette Kayyem wrote a piece yesterday saying you meet a surge with a surge.

Now, it does not mean that we do not also work on the pull factors and the push factors, which are important. It does not mean we also do not fix our immigration standards.

But I will go back to *Flores* for a second, not because I want to beat a dead horse here, but because I think it is important. I was a Governor. I ran a number of systems. My own view is that every time you give human beings deadlines and limits, they go right up to them, and then they go a little past them and a little past them.

So my concern is not—I am not critical of the personnel trying to do their best at the border, given how overwhelmed they are and the fact that those time limits are very hard for us to meet right now, given the lack of capacity at the border on our side and the numbers that are coming to our border.

My concern is instead of changing the standard, we change it to 25 days, because it is human nature, now it is going to be 28 days or 35 days before kids get out.

If you instead change the focus to the capacity of what we need at the border as the United States of America to keep children safe within the standards we already have—that is the surge capacity that I would like to see us focus on—while we are fixing the long-term problems, I think there is a lot of agreement for it at this table.

Chairman JOHNSON. The problem is we do not know what capacities—is it from the last 3 years, or is it this year? And is next year going to be even worse?

There was a study done in Guatemala that said a third of Guatemalans intend to migrate to the United States. That would be 5.8 million people. If they start coming through quickly, we will not have anywhere near enough facilities.

Ms. TANDY. If I could just address—

Senator ROSEN. I understand that work on legislation that will stop the push or the pull, and so if you do them both simultaneously—

Chairman JOHNSON. That is a long-term solution. We have a problem in the here and now.

Ms. TANDY. If I could just address, Senator Hassan, your points that this panel only recommended a change in *Flores* for children who are accompanied by a parent. We did not recommend changing any of the time limits that *Flores* applied originally in 1997.

The extension of those time limits a few years ago by the *Flores* courts to push that into the family units is where this crisis really took off.

Senator HASSAN. Right. I understand that, and I have the footnote with your recommendation on *Flores* in front of me because I wanted to reread it before we had this discussion.

But the issue is this. We know separating children from families is not only wrong but unacceptable to Americans everywhere, on all sides of the aisle, and we know that detention of children is harmful.

What I have been trying to focus on is just our capacity as a country, the greatest country on earth, with more resources than any country on earth, to do the right things by kids, which I believe we have the ability to do while we are working on these other issues.

I understand why the recommendation is there. I just think we are seeing it as a false choice, and I think we can do better. I would look forward to continuing to have that conversation with all of you because I know you are trying to do your best by kids too.

Dr. COOPER. Senator Hassan, if I could respond to what you said about building capacity at the border or wherever these either unaccompanied children or children with families are going to be, from a medical perspective, there needs to be a fixed location at

every border station separate from the border detention environment, so that health care providers can humanely evaluate and treat children and monitor them, even keep them overnight if necessary in a safe and appropriate manner. That would be a very achievable and not extraordinarily expensive intervention that I think should be present at every one of those sites.

Senator HASSAN. Thank you very much.

Senator PETERS. So part of—and I want to get back to, Leon, your point about the choice, the number two choice where you try to process quickly.

So that was part of the aspects of your report is to have this rocket docket at the regional center where you bring folks together. I guess my question is, How realistic is it to actually get the kind of due process necessary to do it in 20 or 30 days?

I know the Acting Secretary said 20 days is not enough. I mean, what are the practical aspects associated with it? How many immigration judges are you going to need? You said the difficulties of getting documents, of really getting full.

Mr. FRESCO. Sure.

Senator PETERS. Give me some substance behind that.

Mr. FRESCO. Yes. Under the current system, it could not work because under the current system, if you are not providing people with counsel, you have to give them time. If you are not providing people with an opportunity to get documents, you have to give them time.

Senator PETERS. So you are recommending that counsel be provided?

Mr. FRESCO. I am recommending you give them counsel on day one, so you are not spending a lot of time with people saying, “I need time to find counsel,” because you already have it.

Senator PETERS. So they get it. On day one, they get counsel provided to them.

Mr. FRESCO. Yes, exactly. The issue of the documents was something that was just added in the Real ID Act in, I think 2004. Before, if you had a claim that sounded credible, then what the court would do is they would decide, “Does this claim sound credible?” If you say, “I flew on a magic unicorn here,” that is not a credible-sounding claim. But if you give a claim that sounds credible, they used to not make you corroborate that with documents because it wasted a lot of time. This is what happens now, and what you do is you can just plug in the legal factor. Is this still a cognizable asylum claim?

There is a lot of people who are making the assertion that this is not a valid social group, and other people say it is a valid social group. Let us get to those claims without wasting all the time. The entire waste of the asylum hearing is forcing people to go get documents that they do not have already because they fled the country, and they are not going to be able to get those documents. If you take those two things out of it and just move to the nuts and bolts of the adjudication, you can in fact do it very quickly.

Senator PETERS. In 20 days.

Mr. FRESCO. In 20 days if you had a significant number of judges that you added to the courts and you gave people counsel.

Senator PETERS. What would we need? Did you do any analysis on how many?

Chairman JOHNSON. It depends on what the flow is.

Senator PETERS. Yes. But, I mean, per person.

Ms. TANDY. When in April, Senator, we recommended doubling the current number of judges—so that would be, at that time, an additional 30 judges, who in a way, the last in/first out (LIFO), so that the judges would have no other docket except for the border surge. And they would address that first instead of the entire backlog of these asylum claims.

Mr. AHERN. Which actually is the right way to do them because, with the current number, if you can believe the number as being accurate, it is somewhere around 800,000 cases currently backlogged before Executive Office for Immigration Review (EOIR).

Senator PETERS. Right.

Mr. AHERN. So if you just put the most recent one at the end of that list, the individuals coming here, if their objective is economic interest, they are going to achieve that over the several years it will take before they actually get their appearance notice to come before a judge for a hearing. So the last in, first out is a critical component.

Chairman JOHNSON. The system is tracking people—

Mr. AHERN. That is right.

Chairman JOHNSON [continuing]. Which is why the numbers are growing.

Mr. AHERN. That is right.

Mr. FRESCO. Many times, the lawyer will advise the person, in my view, if the whole system is running the way it is supposed to, ethically, “Sir or ma’am, you are not articulating an asylum claim. You have to concede to removability here,” if they are not.

If they are a genuine refugee, then they will say, “OK. You can move forward in this situation.”

Chairman JOHNSON. So I am still trying to twist these two Senator arms to help sign the letter of support for Operation Safe Return.

As imperfect as that is, I still believe—because you are talking about changing the law, and I am not seeing that happen anytime soon, unfortunately.

We may be able to pass something in Senate, but again, I think we still have a pretty high hurdle in the House.

So, again, my assumption is we are not going to be changing any law anytime soon. So within existing authorities, the letter of support for Operation Safe Return would use authorities in use as of June 30, so nothing further. It is just what authorities, laws, regulations are in place there.

I mean, is that something you could continue to work with us on to try and hone—a really good idea by Senator Peters where you are trying to go through this was real-time evaluation through the Inspector General Office and the Government Accountability Office (GAO) in terms of getting the individuals in, evaluating why they are coming in, how many are reaching that credible fear claim, how many being adjudicated—again, real-time information to inform future public policy, future law changes.

Again, it is not the solution—

Mr. AHERN. Right.

Chairman JOHNSON [continuing]. But it is a step that can maybe make an improvement. If we could return people that do not even achieve that initial credible fear claim, start returning those people in a credible fashion to send that signal—"Do not take this risk. You are going to go home." You might be able to see that floor reduced as you said with the Brazilians when you had the process of expat removal.

So, again, just kind of get your—

Mr. AHERN. Sure. So I think the first response to that is any movement that will go ahead and add consequences to the current flow that would then result in it being reduced is a positive step, without question. The question becomes is how much of a material impact will it have on the overall body and the numbers.

But you have to start. Please understand that does not take the Congress off the hook for some of the legislative changes needed.

Chairman JOHNSON. Not even close, but it is something.

Mr. AHERN. The funding that is needed as well. It is all about the messaging as well because there is a tremendous amount of narrative that goes down in those Northern Triangle countries. A lot of it is controlled by traffickers and even by almost quasi-travel agencies. These things start—

Chairman JOHNSON. They have cards like a travel agency is what we have been told.

Mr. AHERN. I know. We have seen them, and we will see them when we go back down in a couple of weeks.

Say it is \$200 a week or a day. I believe that they can be a multiplication factor for the numbers that would actually decide not to go if they start to realize as a consequence that it is not just a free pathway to being able to stay in the United States for a number of years while they wait for their hearing.

So if the number is small—I wish it would be bigger, but it is small. But it is a start.

Chairman JOHNSON. You publicize it.

Mr. AHERN. But the consequences could be more significant if that messaging factor goes down to the Northern Triangle countries.

Senator PETERS. The rub here—and I just want to—because the kind of issues we have worked through this is having not just access to counsel, but actually having counsel. So if there was a program that says you have access to a counsel, how realistic is that to really get counsel for these folks? So what is the timeline versus what you are proposing, Leon, which is actually providing that government attorney? Is that the standard we should be looking at?

Mr. FRESCO. I mean, here is the issue that makes things complicated for me is if you are trying to do a pure expedited removal-based solution, I actually feel like that was—for better or for worse, that was what the Dilley, Karnes facilities were created to do.

The problem is the expedited removal solution did not engender a lot of removals. I do not know what the number is so I will not quote any more numbers, but I think that is why—and the reason it does not is because of the legal standard you have to apply, and so that is why I think—

Chairman JOHNSON. By the way, that alone in terms of Operation Safe Return would be good information to have—

Mr. FRESCO. Yes.

Chairman JOHNSON [continuing]. So we have the numbers and say, "That is why this is not working."

Mr. FRESCO. Right. I mean, that is what I think. The complication is twofold, or here is what my concern would be. But I think you are on the right track. I just think the concern would be if you end up detaining people for the entire time necessary to try to accomplish this and you cannot because you keep hitting the 20 days of *Flores* and you have not accomplished the removal, then the whole thing fell apart.

Chairman JOHNSON. It is a pilot program.

Mr. FRESCO. Yes.

Chairman JOHNSON. Again, we would learn from that, then.

Mr. FRESCO. Yes. Oh, of course.

Chairman JOHNSON. Again, in our phone conversation, I agree with you. I originally said it as those include that have a valid asylum claim, and we realized, well, that is not going to be possible. We have to do it based on credible fear, but you do what you can do. Right now, this is the only thing we really can do within existing law, existing authority, but it will inform the process.

Trust me. I realize it is not a panacea. I realize it is not the solution, but if we can do something in a bipartisan fashion that literally communicates to human traffickers, again, on a bipartisan fashion, "We are not going to allow you to exploit our laws anymore. We are going to start moving in that direction on a bipartisan basis," recognizing this is not acceptable.

This is causing harm to people, and we want to dissuade it. We want to deter it. That is what we are trying to accomplish here is just a first little baby step toward bringing a solution.

Again, I will make the appeal publicly. Please sign on the letter of support, and work with us and DHS to do it.

Senator HASSAN. You gave it in last—

Chairman JOHNSON. OK.

Ms. TANDY. If I could just add, Senator, Operation Safe Return, is a baby step. If the laws are not going to be changed, as this panel has recommended, there is nothing else. There is nothing that is going to stop these children from getting harmed. There is nothing that is going to stop the dangers that we are seeing right now. It will just continue, and it will increase.

A baby step is better than nothing. But having said that, this Operation Safe Return is not an act of Congress. It is within current authorities and funding. So there is no reason that the Department of Justice, the Department of Homeland Security, and HHS cannot just do it and do it yesterday.

So I realize that—

Chairman JOHNSON. Here is the problem is anything the administration does it challenged in court, and what I am trying to do is—

Ms. TANDY. No, I understand.

Chairman JOHNSON [continuing]. To at least try and provide bipartisan support saying we actually want the administration to do this. Maybe not bad, but this.

Ms. TANDY. You will give beleaguered agencies the cover that they need to do this. I do not know that it is enough to keep courts from intervening, but nonetheless, we do applaud doing something.

The real critical factor that is going to change these numbers is rolling back *Flores* to what it was originally intended for so that we can get these processes with funding, with judges, with a rocket docket, and get this stopped. Without that, this is what will happen.

Chairman JOHNSON. I want a quick—

Ms. TANDY. Can I just finish my point, Senator? This is what will happen. You know these criminal elements on the other side of the border, and what will happen is the Operation Safe Return will be the point of no return for these criminal traffickers. They will move elsewhere on the border and push people elsewhere on the border, and some of the worst places on the border for these sick children is in New Mexico. Border Patrol stations are not even open 24 hours. They are so remote. So there is a risk that it will divert the flow.

Chairman JOHNSON. You can go from all over the border and then be accumulated in Dilley.

Ms. TANDY. Yes.

Chairman JOHNSON. You can do it so that that is not an incentive.

Ms. TANDY. So, ideally, Senator, this toe in the water is not just in Dilley. It starts, and it starts all over the border to prevent that from happening.

Chairman JOHNSON. But that would be like your regional processing center, though, OK?

Ms. TANDY. It would be.

Chairman JOHNSON. So anybody from the border, any part of the border could go there and have this process.

Ms. TANDY. Yes.

Chairman JOHNSON. But I did want to quickly talk to Leon, because you are on the other—oh God, I totally lost my train of thought. I will come back to you. Sorry.

Ms. TANDY. Sorry about that.

Dr. COOPER. One thing I would also like to encourage is that we increase the funding to DHS because these children and families that are coming into the interior are all going to have to go into public school settings, and for the unaccompanied children, they are going to have to go through our out-of-home care settings and child welfare settings. Having spoken to several directors of various communities, where large groups of children have been brought, it is obviously very overwhelming for them, and so I think that that would be the other thing that we should do to try to accommodate those children who are already in the interior.

Chairman JOHNSON. I remembered. Again, you are a Democrat, right?

Mr. FRESCO. Yes.

Chairman JOHNSON. OK.

Mr. FRESCO. A Schumer staffer.

Chairman JOHNSON. Do you agree with Secretary Johnson, who vehemently disagreed with the *Flores* reinterpretation, that *Flores* settlement agreement did not apply to unaccompanied children?

Mr. FRESCO. The specific problem with asking me that question, I was actually the attorney who was arguing that *Flores* would not apply.

Chairman JOHNSON. Oh, I did not—

Mr. FRESCO. That was my job in the Department of Justice.

Chairman JOHNSON. Sorry. I did not—

Mr. FRESCO. I actually argued that in court about the *Flores* agreement did not apply to families.

Chairman JOHNSON. OK.

Mr. FRESCO. We did not win that. We did not win that argument.

Chairman JOHNSON. Rats. I wish you were a better witness for that.

Mr. FRESCO. Yes. [Laughter.]

Chairman JOHNSON. That is the first thing. I would tell you to take a look at what we are trying to do with *Flores* is just go back to the intent of the *Flores* agreement, which was for unaccompanied children, and the fact that some courts somehow decided, that it applies to accompanied children as well—

Mr. FRESCO. There is an hour YouTube clip. You can watch me making that argument.

Senator HASSAN. But let me be practical for a second, which is most of the people, as you have heard me articulate, there are a lot of us who believe the reinterpretation was correct, given what happens to kids in detention.

So if that is where the House is going to be, the question becomes whether you all have looked at the alternatives that have been suggested. They have not been piloted in any meaningful way, and whether there are other things we can do—because, again, if we go back to the fact that none of us want to have what happens here unnecessarily add to the trauma that children experience, what other things can we do in terms of access immediately to attorneys, penalizing smugglers who are faking their relationship to the child or exploiting that? What are the—and case managing families so that they show up and having enough judges so that they are not here for years waiting for their process?

There are a lot of suggestions that have been made that, yes, require resources, but I think, again, in a bipartisan way, targeted resources of some of that could begin to impact numbers too.

I think that is where the practical piece is. We could try to relitigate the *Flores* reinterpretation. Some of us agree with it; some of us do not. But it is what it is.

Chairman JOHNSON. Here is my concern about resources is that at the current level, I mean, the resources we are going to have to employ here, I am not sure we have enough, OK?

So, you can maybe resource this if we are down a couple hundred thousand people a year, but now we are starting to approach a million. So that is a concern.

One question I had, because we have not talked about this, I am starting to read news accounts on how schools are having to deal with the dispersion. You have children coming in from the mountains of Guatemala, completely different dialect. You do not have people that speak their language.

Plus, as James was talking about, the large number of 17-year-olds. Unaccompanied children, 70 percent are male, 70 percent are

over 15, the perfect population, if they are not already a gang member coming out of El Salvador or out of Guatemala. You do not speak the language. You are going to gravitate toward people that do. Got a pretty good chance of joining a gang.

So we are really not focusing enough, from my standpoint, on the human trafficking element, but also the societal challenges, whether it is in our school systems or whether it is in our inner cities where those gangs might operate, is that something the council took a look at in any meaningful way?

Mr. AHERN. The panel probably did not review the issue to the extent that you are suggesting. But I think one of the things, as I mentioned in my beginning statement, we need to look at this as a continuum. We need to look at this process as a complete supply chain. What is happening down south in the Northern Triangle countries? What is Mexico doing to control its border?

There have been some recent changes. It will be interesting. Their history has not been good at being able to sustain efforts.

What then happens at our border, and unfortunately what gets on the nightly news are the horrific situations that is being dealt with at the border.

Chairman JOHNSON. Right.

Mr. AHERN. That is a piece of it. People do lose sight of the fact of what then happens when it goes off to detention, to HHS—

Chairman JOHNSON. Actually, it is a very short piece.

Mr. AHERN. It is.

Chairman JOHNSON. You are literally talking days.

Mr. AHERN. When you add the amount of time it takes for them to go ahead and come in transit, to make it to the border, beyond the time they spend at the border and in detention, there is more at the other ends. But looking at the consequences after arrival is not being looked at.

Ms. TANDY. To that point, we are now receiving information and briefings that are being scheduled on the consequences. So it is the interior consequences, as you suggest, schools, communities, and the impact of not stemming this flow and what it is doing on the interior and will continue to do. So that will be part of our final report, which we expect to have at the end of September.

But, Dr. Cooper, I know that you are very focused on the maltreatment and a national expert on the maltreatment of children.

Dr. COOPER. Yes, very much so. What I was going to say is 17 is a magic number, but we do have the medical capability with x-rays to have a better determination about whether an individual is a fully grown or completely mature adult versus an adolescent. We have that capability. It has not been used because we do not have x-ray machines available, but it is usually a radiographic evaluation, one of the things that could be beneficial for all these individuals.

Chairman JOHNSON. We have Deoxyribonucleic acid (DNA) testing. You are talking about the fraud aspect of this, which is—

Dr. COOPER. I am talking about the age.

Chairman JOHNSON. The age, the age fraud, but also fraudulent parents too.

Dr. COOPER. Yes, that is correct.

Senator PETERS. You mentioned Mexico and the issues there, but yet the report recommends the safe third country agreement with Mexico. How realistic do you think that is, panel?

Mr. AHERN. I think if you can actually take the current president of Mexico at his campaign promises, he is pretty strongly against it. So if he is going to stay true to that promise, it is going to be a real challenge.

I think something that perhaps has all the elements of a safe third country, perhaps it will remain in Mexico type of a protocol, some of the Migrant Protection Protocols (MPP) things that were being considered may be achieving some of the same objectives without having that label of a "safe third," because I think signing a safe third is probably not likely.

Chairman JOHNSON. Did you see the public opinion poll of Mexicans that came out today?

Mr. AHERN. Yes.

Chairman JOHNSON. It is pretty negative against the immigrants. People coming into Mexico are taking Mexican jobs, potentially if they are going to stay. So they really have very little publicly or I would say—

Mr. AHERN. Over the last few years, the Mexican economy has stabilized pretty well. That was one of the impacting factors about slowing the flow here to the United States. There was no need to come here for economic reasons. So they were able to stay in Mexico. Now that is putting a new dimension into the challenge within Mexico.

Mr. FRESCO. In an ideal world, what you would have, in my view, is one or two staging facilities where you would make these claims, and then you would have an entire western hemispheric refugee resettlement program. We would take some. Brazil would take some. Chile would take some. Argentina would take people. We would take refugees from all over, and we would do burden sharing. I think that is, in my view, a much better, longer-term—

Chairman JOHNSON. In an idea world, America would not have an insatiable demand for drugs.

Mr. FRESCO. Yes.

Chairman JOHNSON. So you would not have the drug cartels which have destroyed public institutions, the impunity and the breakdown of so many aspects.

Mr. FRESCO. There is a lot of factors.

Chairman JOHNSON. I think America bears responsibility, but that is a very long-term project right there because, as I have tried to explore, how do you get to the drug cartels, well, they control a large percentage of communities in Central America, even in Mexico. Those communities are supported by the drug cartels. It is not like you can go in there with surgical strikes and get rid of a drug cartel. This is a pervasive problem, again, because of our insatiable demand for drugs.

Senator Carper, you missed all the solutions. We have it all figured out.

Senator CARPER. You solved the problem.

Chairman JOHNSON. Without you.

Senator CARPER. What did Winston Churchill used to say? "Success is never final. Failure is never fatal." There you go.

We have simultaneously a hearing going on in the Environment and Public Works (EPW) Committee focused on climate change, sea level rise and all that, and the role that electric vehicles are playing in that and how we need to recycle the batteries from electric vehicles and we generate all of these employment opportunities by doing so, so pretty good stuff.

I am sorry I had to slip out and missed part of what you were saying.

I understand from my staff that—Abby gave me this notice. I understand I missed some discussion around Operation Safe Return. For my benefit, would you please summarize?

Chairman JOHNSON. Yes. Twisting your arm too.

Senator CARPER. There you go.

What are some of the risks and some of the benefits of that pilot, and what are three things that we need to do to make it better?

Leon, do you want to start?

Mr. FRESCO. Sure. I did not either endorse or not endorse Operation Safe Return. I personally do not view the expedited removal process as the ideal way to go through this because I think the legal standard is an illegal standard that if you are doing it correctly will lead to high credible fear determinations, and if you are doing it incorrectly, it will lead to litigation, which will not also create the returns you want.

So what my focus—

Chairman JOHNSON. But I am not saying it is ideally—

Mr. FRESCO. Oh, no, no, no. Fair enough. We have all options that are suboptimal. I am totally with you there, Senator.

So my only point is I—this is just me. So I am not speaking for the Homeland Security Advisory Committee, but I would want to say you have resources now. Congress does not have to change the law. You could actually get people lawyers on day one, put them in the normal removal process, not the expedited removal process, and see if we can actually get removal hearings done as quickly as possible, not expedited removal hearings, because the expedited removal hearing will end—we have seen this 80 or 90 percent of the time—with a credible fear determination saying yes, and now what? Now we are back, so we have wasted all of those 20 days.

Chairman JOHNSON. If we do not do anything—

Mr. FRESCO. No. I agree.

Chairman JOHNSON. I guess what I would say is I am happy to have Operation Safe Return morph into something that works better and better. I mean manufacture it, incremental and continuous improvement. I look at that as a first step, and I want to move in that exact same direction. I am just not sure whether we can, but Operation Safe Return would allow us to have a program that can morph into something that is more effective.

Now are you in support of it?

Senator CARPER. Let me go back to—

Mr. FRESCO. Supportive or not supportive. I want to keep talking to your staff, with everybody—

Chairman JOHNSON. I am a salesman. I am trying to get—

Mr. FRESCO. I hate saying anything to not be supportive but we need to work on it.

Mr. AHERN. I can tell you something from a historical and operational perspective for over 30 years. Anything you do that is going to have a consequence on the flow is a positive. For that, I think this body really needs to take a strong look at beginning that as a pilot.

It is a very small first step. Make no mistake, the legislative fixes still are required. But anything that will start to go ahead and send a different message than the message currently sent by this Country down to those Northern Triangle countries is an important step. It is going to yield a very small number. But again, let us look beyond just the numbers of who would actually be physically put into removal proceedings. The impact that could have on the messaging down in the countries of origin could be more significant. But, again, we need to start. It is a beginning of a process. It is not a huge step forward.

I think the other thing that will be very interesting to see is how the interim final rule that came out from DHS and DOJ in the last 24 hours on asylum is going to have the impact on flow as well.

So staying close to those factors are important. But to really impact those pull factors that this country has put out there is going to be important to manage the flow.

As we talked about children, for a large part of this hearing, a lot of those issues go away and the situation becomes a lot easier to manage if we manage that flow and reduce it substantially back to a more normalized number. These are the steps that need to be taken going forward.

Ms. TANDY. I would just add, Senator, that if Congress is unable to change the law and put *Flores* back to where it was with only unaccompanied children addressed and if TVPRA is not going to be amended, Operation Safe Return, to the extent that it is within existing authorities and within existing resources, is something that absolutely should be pursued.

It is a step, and to the extent that it is described as a research and opportunity to—as an experiment, if you will, to see if it will work, I think it could provide very valuable data.

There is a facility in Texas at Dilley where it is underutilized right now, and it has all of the capability of implementing Operation Safe Return.

Our colleagues, Dr. Cooper and Jay Ahern, were there just a couple of weeks ago.

Senator CARPER. Where is it?

Ms. TANDY. Texas.

Mr. AHERN. It is in Dilley.

Senator CARPER. Where is that?

Mr. AHERN. It is 65 miles south of San Antonio, and it has four or five courtrooms already established, with video capability to get the administrative judges to be able to go ahead and actually video in if they are not actually physically there. It is currently a 2,400-person capacity.

Sharon, what was it? 600 people were there at the time?

Dr. COOPER. Yes. It has excellent medical facilities, everything, x-ray, everything you could need to handle any health care issues that would arise, even in a group setting such as that manner.

Chairman JOHNSON. Jay and Karen convinced me. Come on, Leon. [Laughter.]

Ms. TANDY. So it is not a panacea, Senator. It is not a panacea, but I think it is an important step. If the other things are not going to happen that we have recommended, it is a very important step and will give you some kind of data to know how to factor in the laws, the legal changes that should be made and what the legal framework should be.

So to that extent and because it is something that could be done right now, I do think it is an important first step.

Chairman JOHNSON. That data collection, by the way, that was Senator Peters that put in process.

Ms. TANDY. Excellent input.

Mr. FRESCO. Yes. You would need to know if it worked for sure.

Mr. AHERN. One final point, obviously.

Senator PETERS. There is just a dearth of data on this whole process, which is really frustrating trying to come up with policy.

Chairman JOHNSON. Your fingerprints are all over that thing, so you might as well sign on.

Mr. AHERN. One of the key questions too as you go forward is to consider obviously how you operationalize it. The issue of how to operate becomes always a question in dealing with the operational agencies like CBP and ICE on what will be the operational impacts. As Karen mentioned a few minutes ago, you do not want to necessarily forecast to the trafficking organizations what corridor you are going to be running during that particular day and week.

They can all go to Dilley. That is fine. But where you actually are operating and what population of people you are going to be using—

Chairman JOHNSON. They want to keep that—

Mr. AHERN. We did this in our drug days together.

Ms. TANDY. Right.

Mr. AHERN. You want to be able to have jump capability to move around. So you are trying to play a more unpredictable game with a very adaptable adversary, like the cartels, and the same people you are dealing with today. So being able to go ahead and have a good operational program that is attached on how they would do the implementation—

Chairman JOHNSON. That is something we have to implement from day one.

Anybody? Any other comments?

Senator CARPER. If I could, my colleagues may recall I led a congressional delegation down to the Honduras, Guatemala, and El Salvador back at the very beginning of this year, and we were looking at numbers through really beginning of November in terms of illegal immigration. The numbers were pretty flat, and as you look at that chart¹ back there, pretty flat right up until the beginning of November. It sort of exploded.

Among the things, we focus a lot—and it is important that we do focus—on symptoms of the problems at the border, what we see at the border, but it is also critically important, as my colleagues

¹The chart referenced by Senator Carper appears in the Appendix on page 426.

know, that we try to figure out what is going on down in Honduras, Guatemala, and El Salvador sending all those people up here.

It turns out El Salvador, the surge has been a lot less dramatic, and one of the reasons why is they had an election there. They elected a new president. His name is Bukele. He is like 37 years old. He is the former mayor of San Salvador, and people have hope. People have hope that there is going to be a better day.

Meanwhile, in Honduras last year, Juan Hernandez, the president of the country, got the Supreme Court to declare that their constitution was unconstitutional and he could run again, and he won a razor-thin reelection that just really rubbed a lot of people the wrong way. I mean really made people angry. They are still angry.

Over in Guatemala, Jimmy Morales, who is the president, who everybody had very high hopes for 4 years ago when he was elected, it has turned out to be a bitter disappointment. He tried to chase out of the country, the United Nation (UN) entity that is there to try to go after the corruption and so forth. When they had their Presidential election, the best person that could have been on the ballot was not even allowed to come into the country and campaign, Thelma Aldana, the former Attorney General who was like death on corruption when she was Attorney General. And so people are just really like fed up.

Plus, you have the situation with climate, climate problems and situations that people cannot grow coffee up in the highlands, and there is a real surge of people there. There is a lot going on there. So it is important that we focus on the stuff that we are talking about here today but also be mindful of some of the things that I just mentioned.

There is one of my favorite songs. I love music. One of my favorite songs is a song called "Hope in a Hopeless World," and this is not an easy problem to solve. But there is hope, and the work the four of you and your presence here and our Chairman and Ranking Member hosting this roundtable today gives me hope and what for many people is an all too hopeless world.

Ms. TANDY. Thank you, Senator.

I would add—

Senator CARPER. I will not sing.

Ms. TANDY. I am sorry?

Senator CARPER. I will not sing today.

Chairman JOHNSON. Thank you. [Laughter.]

Ms. TANDY. That would probably keep people here.

Senator, we are looking at those push factors and traveling to the Northern Triangle to Guatemala and Honduras as a panel. That is coming up next month.

In the meantime, we are receiving a number of briefings from the State Department, NGO's, and others regarding the very matters that you just talked about with regard to corruption, extortion, and other issues in the Northern Triangle that are affecting these flows.

So our report was an emergency report focusing on the pull factors and trying to stem the flow quickly on the family unit side. We are yet to address the push factors, which will be in our final report in September.

Senator CARPER. Good. We as a body, the Congress, House and Senate, in a bipartisan way have been supporting, focusing on the three major causes for people that want to get out of those countries: one, lack of economic hope and opportunity; two, crime and violence; and three, corruption that is just endemic.

Ms. TANDY. Absolutely.

Senator CARPER. What we are doing with Alliance for Prosperity, which we get about—for every dollar we invest, we get \$5, \$6, or \$7 from other sources invested to address those three major push factors.

Thank you.

Chairman JOHNSON. Senator Peters.

Senator PETERS. All set.

Chairman JOHNSON. Anybody else want to make any further comments?

Ms. TANDY. On behalf of the panel, we sincerely appreciate the opportunity to talk about the issues in our interim report as we saw them and are grateful for your focus. We have high hopes as well, Senator, and look forward to the outcome.

Chairman JOHNSON. Let me just say I want to echo what Senator Carper was talking about, how much we appreciate what you have done.

Oftentimes Congress will set up a commission. This was done by the Department of Homeland Security, but a really well-designed council from my standpoint. I think really well staffed, talking about the members, and the fact that you do have a broad spectrum, and you are coming together. You are accommodating each other's views and really doing a very thoughtful job of problem solving. We talk about it all the time, gathering the information, defining the problem, root-cause analysis, and then establishing achievable goals and then start designing solutions. Everything I am reading, everything, all of our discussions, you are going through that very thoughtful process.

I appreciate the fact that you recognize this was an emergency and you had to issue an emergency interim report, and I am just looking forward to September, a final report, but also continue to work with you because I think this council can really have an impact.

Again, because the bipartisan—I actually prefer using the term “nonpartisan nature.” I think it is what this Committee has a pretty good track record under Tom’s chairmanship and Susan and Joe Lieberman. It is just a tradition here.

I think working together, we really can move the needle on this. I will take the incremental. I will keep twisting Leon’s arm to get support fetches, that baby first step, but it is a step. Otherwise, we just sit back and we do nothing and we just keep yacking about this.

Again, I think we were all pretty well moved by that picture of that father and his daughter. I called up Gary that morning and said, “OK. Are not you sick of this? Let us start doing something different. Let us start having these discussions,” and I thought this was a very good discussion, kind of wide-ranging, maybe not as focused as I would have it, but that is the nature of the beast.

So we will continue to have these discussions with a very sincere desire of starting to develop solutions, improve the situation on a continuous basis, and again, I just cannot sing your council's praises enough and all of your involvement. Thank you for doing it.

So, with that, the hearing record will remain open for 15 days until August 1, 5 p.m., for the submission of statements and questions for the record.

This hearing roundtable is adjourned.

[Whereupon, at 11:07 a.m., the Committee was adjourned.]

A P P E N D I X

Opening Statement of Chairman Ron Johnson
**"Unprecedented Migration at the U.S. Southern Border: Bipartisan Policy
Recommendations from the Homeland Security Advisory Council."**
Wednesday, July 17, 2019

The migration crisis at our southern border continues. In May, U.S. Border Patrol apprehended 132,880 aliens as they illegally entered the United States. In June, the apprehension numbers dropped to 94,897, but even at that level, apprehensions are higher than they've been in over a decade. According to DHS, we are still on pace to apprehend more than one million illegal migrants at our southern border this fiscal year.

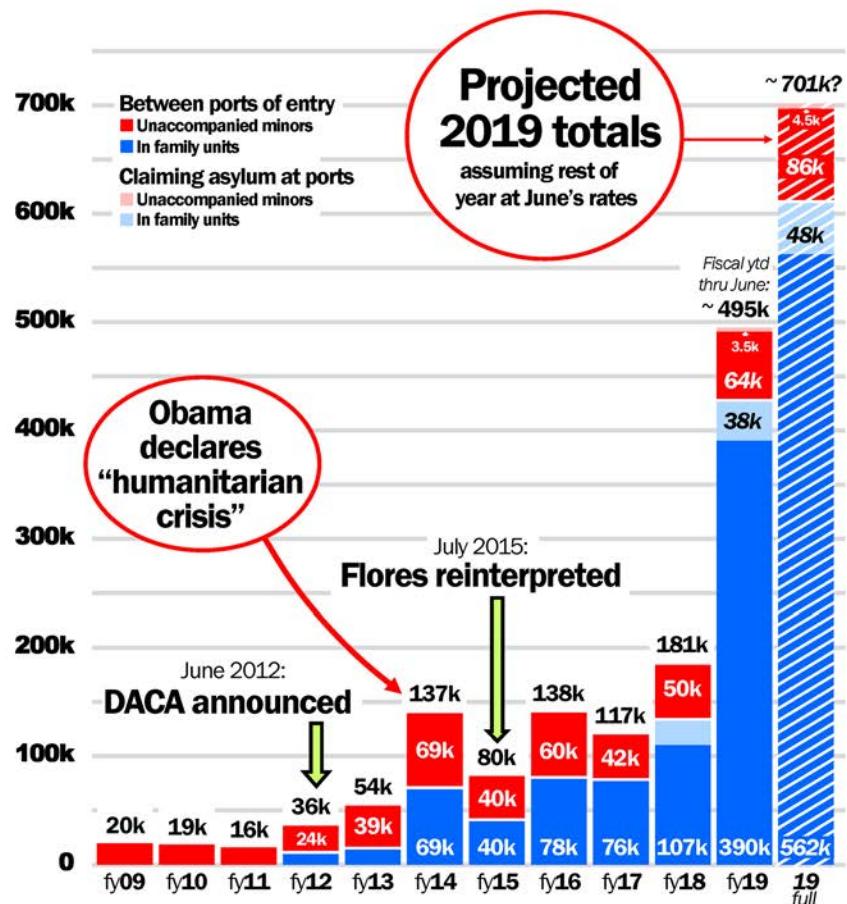
This is the fourth hearing that our committee has held this Congress regarding the crisis. The first three hearings focused on the magnitude of the crisis, perspectives from the frontlines, and the exploitation of migrants by human traffickers. Today we will turn our discussion toward solutions.

In April, a subcommittee of the Homeland Security Advisory Council (HSAC) issued a bipartisan report about this crisis that included recommendations for how we could fix many of the problems they identified. The bipartisan subcommittee consists of 10 members from different ends of the political spectrum and various, relevant walks of life. It includes doctors, lawyers, and immigration policy experts. These 10 distinguished professionals defined the problem, and then sat down and hammered out a set of policy recommendations that they believe will fix this problem. They visited CBP facilities, studied aspects of care for children and adults in short-term custody, identified best practices for law enforcement interactions with migrants, and provided recommendations for changes to the agency's policies and procedures. They grappled with complicated issues, such as how U.S. asylum standards combined with the *Flores* settlement agreement and a surge of migrants has created open borders for any migrant who travels here with a child. They identified resource limitations and proposed solutions for making the process more efficient. They also recommended cooperation with international partners.

Today we will discuss the bipartisan recommendations found in their April 16, 2019 Emergency Interim Report. The purpose of holding this hearing in a roundtable format is to promote a more in-depth and open discussion of the crisis and bipartisan solutions to mitigate it. Decades of failed laws and lack of action by Congress has led to this current crisis. The men and women of DHS continue to do their best, but they are not provided the resources or law changes they need. Although we will not solve the crisis overnight, we must work together to reduce the flow of illegal migrants and improve the situation. I know that the recommendations in the HSAC report did not include all of the changes that each member would like to have seen. But that is the essence of working together. The Council has provided an example and lesson in bipartisan accommodation that Congress would do well to emulate.

MINORS AND FAMILIES

APPREHENDED AT S.W. BORDER OR CLAIMING ASYLUM AT PORTS



May 3, 2019

U.S. Department of Homeland Security
Homeland Security Advisory Council
CBP Families and Children Care Panel

Dear Members of the CBP Families and Children Care Panel:

As organizations with a deep commitment to and experience in the protection and care of migrant and refugee children we read with great interest the emergency interim report of the Homeland Security Advisory Council's CBP Families and Children Care Panel. Several of our organizations were consulted by the Panel in its preparation of the report, and we appreciated the opportunity to provide our recommendations for improving the care of children in CBP custody. We share the Panel's interest in ensuring the welfare of children and welcome the report's attention to the need for trained professionals and improved capacity to meet the unique needs of children and families. We write today, however, to express our concern about several recommendations in the report that run counter not only to the advice of experts but to the best interests of children. We fear that these proposals, far from protecting children's health and safety, will instead inflict harm and trauma, and lead to the return of children to grave dangers from which they have sought protection.

In advance of your final report, we ask for your consideration of the following concerns to ensure all children are provided safe and appropriate care and a meaningful opportunity to pursue legal protection.

Processing and detention of children

As pediatricians, legal and social service providers, and advocates who have worked closely on these issues for years, we understand the challenges of ensuring the availability of trained professionals and adequate facilities to house and care for children and families along the border, particularly in remote areas. While needed services would ideally be available without the need to transfer facilities and locations, we recognize that this may not be realistic in all locations and that regional processing centers (RPC) may assist in centralizing resources and the delivery of appropriate care. We believe it is imperative, however, that any such centers be carefully designed, staffed, and resourced with input from experts in child welfare to ensure the safety and best interests of children, and that they be used only for initial processing, and not for longer-term detention. We strongly believe that, in both CBP facilities and in any RPC, the processing of and caring for children should be conducted by professionals with child welfare expertise.

We are alarmed by the report's recommendations that Congress roll back the *Flores* settlement to enable the detention of families for longer periods and that new RPCs have sufficient space to "detain all family units apprehended at or near the SWB for a minimum of 20 days."¹ We reject

¹ See, e.g., Homeland Security Advisory Council, Final Emergency Interim Report CBP Families and Children Care Panel, Apr. 16, 2019, https://www.dhs.gov/sites/default/files/publications/19_0416_hsac-emergency-interim-report.pdf [hereinafter "HSAC report"], at 10.

the suggestion that such measures are necessary to address “pull factors” driving migration and strongly oppose the use of detention for deterrence purposes—an approach that is both ineffective and harmful to parents and children.² In fact, there is no evidence indicating that any time in detention is safe for children. The prevention of trafficking is a similarly inappropriate justification for detaining children and families.³ In fact, CBP should already be thoroughly screening for risk factors for human trafficking when processing arriving children and families. Child welfare professionals would be well-poised to conduct this screening, given their expertise in working with and interviewing children and teens. When there are specific cases in which trafficking is suspected, CBP has tools at its disposal and within DHS to flag and investigate these, such that detaining all families for longer is neither necessary nor effective. CBP can also inform children and families of ways to report human trafficking, such as the DHS Blue Campaign. We also have concerns about proposed changes to the Trafficking Victims Protection Reauthorization Act (TVPRA), as the report does not clearly define its proposal and, as written, could have unintended consequences that negatively impact children’s well-being.

Detention of children for even brief periods causes known and well-documented developmental, physical, and psychological harm.⁴ These impacts may be particularly pronounced for asylum seekers, who have frequently fled severe violence and trauma in their countries of origin. Detention also poses significant barriers to accessing legal counsel to assist families in preparing and presenting their claims for legal protection.

Given such concerns, we urge that families be processed expeditiously and released using community-based alternatives to detention (ATD). Community-based ATDs are an effective way to ensure that families are informed of their immigration rights and responsibilities. For instance, programs such as the Family Case Management Program have proven to be successful in securing the appearance of families at immigration proceedings and check-ins for a fraction of the cost of detention, and should be restored and expanded.⁵

Medical care and screening of children

The report acknowledges that CBP currently lacks the training and capacity to appropriately identify and address the medical needs of children. To this end, the Panel recommends that RPCs be staffed with “sufficient medical staff with physicians specializing in Pediatric or Family medicine, nurse practitioners and physician assistants, licensed social workers, mental health professionals, and dieticians.”⁶ The report also recommends the availability of “ancillary contracted medical support” at every port of entry and border patrol station, noting that the placement of a physician at each is “unrealistic.”⁷

² See Linton JM, Griffin M, Shapiro AJ. Detention of Immigrant Children. *Pediatrics*. 2017;139(5).

³ See HSAC report, at 7 (“The risk for commercial sexual exploitation of these children and teens is predictably high and will be very difficult to prevent after transport or release into the interior U.S.”).

⁴ See *Detention of Immigrant Children*, *supra* note 2.

⁵ Women’s Refugee Commission, Family Case Management Program, <https://www.womensrefugeecommission.org/rights/resources/1653-family-case-management-program>.

⁶ HSAC report, at 11.

⁷ *Id.* at 7.

Our organizations strongly support the screening and treatment of children by medical professionals with pediatric training and expertise to ensure timely access to care for sick or injured children. Such conditions may worsen quickly and require immediate attention. The report's suggestion that CBP personnel should be professionally trained to identify illnesses and symptoms such as coughing, fever, and rashes⁸ should not be read as a substitute for prompt and comprehensive medical screening and treatment, as needed, by a trained medical professional and oversight of children's care more generally by qualified professionals with child welfare expertise. We urge CBP to work closely with professional medical associations, namely those with expertise in the health care of children and pregnant women, to provide appropriate training for CBP agents. Such training should enable agents to identify signs of sick or injured children so that they can be quickly referred to pediatricians or clinicians trained in pediatrics for care.

The period immediately following apprehension is one of particular vulnerability for children, who have frequently endured harrowing journeys in difficult conditions. It is at precisely this moment that professional medical care may be needed to prevent conditions from rapidly worsening. We are deeply troubled by reports that CBP agents may be taking life-saving or life-sustaining medications from children with underlying medical conditions, such as diabetes and seizure disorder, during processing. This practice could have tragic consequences and is unjustifiable. The recent deaths of two children in CBP custody underscore the inappropriateness of relying on a law enforcement agency alone to oversee and carry out medical care for children. CBP agents cannot and should not be expected to make medical and diagnostic decisions that may have significant consequences for children's health and well-being—a fact the report elsewhere acknowledges.⁹ As such, resources must be devoted to ensure that every child is promptly screened by a trained clinician for any medical needs and referred for any additional or emergency care that may be necessary.

Access to due process and asylum

While the report expresses concern about the risks and dangers confronting children during their journey to the U.S., it proposes several legislative and administrative changes that we fear will only increase the vulnerability of children in their search for protection. For example, the report urges emergency action to expedite the asylum cases of families, with a hearing and decision on such claims to conclude within 20 or 30 days.¹⁰ The report further recommends changes to immigration law to limit the availability of asylum to families presenting themselves at ports of entry.¹¹ Such changes, among others, are intended to enable the prompt repatriation of families, the majority of whom, the report suggests, "would not likely qualify for asylum."¹² The report presupposes that all asylum claims are invalid, contrary to our due process standards. As such,

⁸ See *id.* at 14.

⁹ See, e.g., *id.* at 7 ("An expectation for clinical acumen by CBP agents and officers is highly unrealistic. Even medical personnel need to have a higher level of expertise to anticipate some of the potential infectious disease complications that can be found in this population of children.")

¹⁰ HSAC report, at 2.

¹¹ *Id.* at 3.

¹² *Id.* at 12 ("Since the majority would not likely qualify for asylum, it would be best if this decision could be made earlier, before they are given NTAs and are released into the interior of the U.S.").

these recommendations overlook the extreme violence forcing many children and families to flee Central America, and in so doing risk the return of thousands of children to harm, danger, death.

Asylum cases demand that children and families share painful details about experiences giving rise to their fear of persecution. It often takes time for children in particular to develop the trust necessary to discuss past harm and trauma. Detention further hinders the ability of asylum seekers to reveal the basis of their claims for protection and to secure and communicate with counsel who may assist in preparing their cases. Expedited procedures requiring children and families to hurriedly present such claims shortly after harrowing journeys to safety and while detained impede access to justice and threaten the incomplete or inadequate consideration of children's eligibility for protections afforded under both U.S. and international law. Contrary to the report's assertions, the prompt repatriation of asylum seekers will not deter migration. It will, however, gravely endanger the lives of children.

Currently, children and families face numerous hurdles to accessing the U.S. to request protection, from the Administration's "Migrant Protection Protocols" ("Remain in Mexico" policy) to the use of metering and turn-backs of unaccompanied children, who are often told they are unable to join informal waitlists or cannot approach ports of entry without an adult or an attorney.¹³ The recommendation that asylum eligibility be restricted to those who can present themselves at ports of entry would eviscerate access to protection for many children and families and would contravene both existing domestic and international law, which provide that asylum seekers should not be punished for their manner of entry.

Restrictions on access to protection are further threatened by the report's recommendation that the U.S. enter a bilateral agreement with Mexico that would foreclose U.S. asylum eligibility for families from Central America. While the report suggests that such policies could change the decision of families to migrate, it is clear that no policy can prevent individuals from fleeing to save their lives. Rather than proposing additional barriers to the full and fair consideration of asylum seekers' requests for protection, our country should instead ensure due process and provide support to meaningfully address the extreme violence, poverty, corruption, and impunity that is forcing children and families from Central America to flee in search of safety.

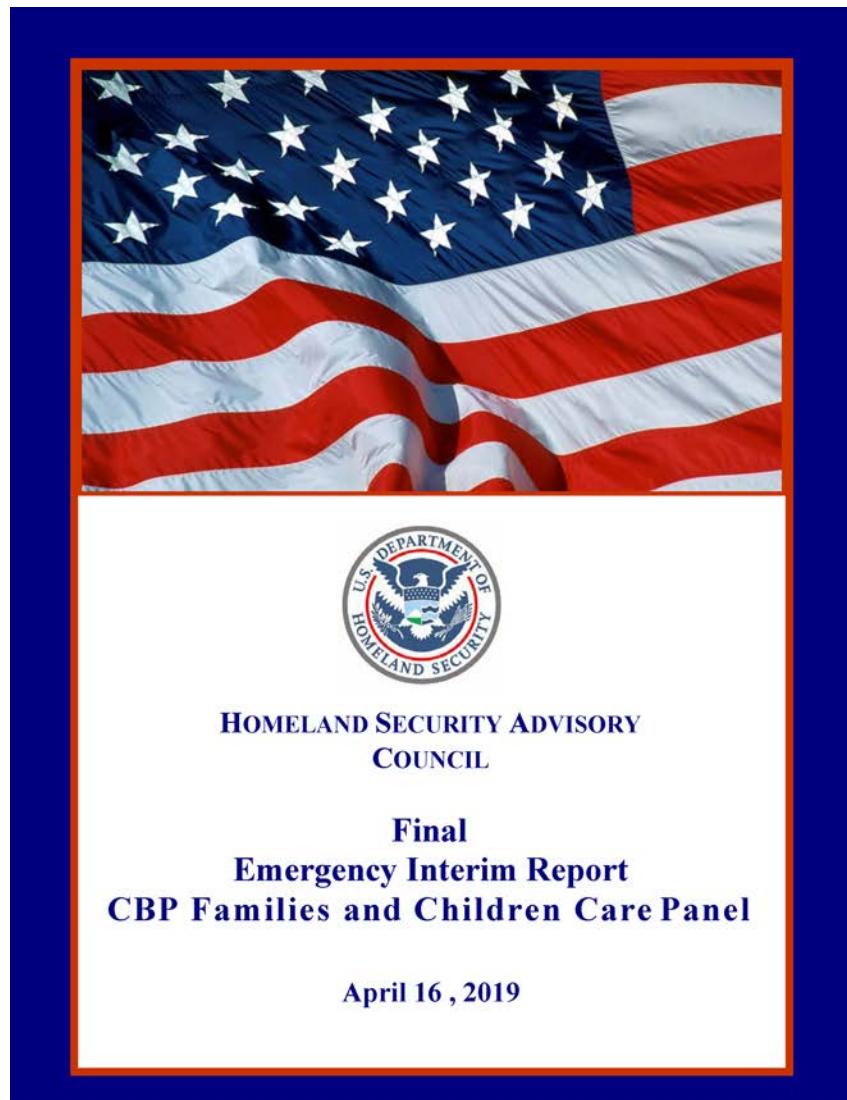
We urge all stakeholders to remember that immigrant children fleeing violence and seeking asylum in the U.S. are, first and foremost, children. Terminology used throughout the report, such as the "recycling" of children, dehumanizes a vulnerable population. Children deserve our compassion, and language used to describe the threats they face must reflect that.

We appreciate your consideration of our concerns.

Sincerely,

¹³ KIND, The Protection Gauntlet, <https://supportkind.org/resources/the-protection-gauntlet-how-the-united-states-is-blocking-access-to-asylum-seekers-and-endangering-the-lives-of-children-at-the-u-s-border/>.

American Academy of Pediatrics
Kids in Need of Defense (KIND)
Lutheran Immigration and Refugee Service (LIRS)
U.S. Conference of Catholic Bishops/Migration and Refugee Services
Women's Refugee Commission
Young Center for Immigrant Children's Rights



This publication is presented on behalf of the Homeland Security Advisory Council, CBP Families and Children Care Panel, Chaired by Administrator (Ret.) Karen Tandy, Drug Enforcement Administration and Vice Chaired by Jayson Ahern, Principal and Head of Security Services, The Chertoff Group, as the Emergency Interim Report to the (A) Secretary of the Department of Homeland Security, Kevin McAleenan.

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EXECUTIVE SUMMARY

There is a real crisis at our border. An unprecedented surge in family unit (FMU) migration from Central America is overwhelming our border agencies and our immigration system. This crisis is endangering children. In too many cases, children are being used as pawns by adult migrants and criminal smuggling organizations solely to gain entry into the United States (U.S.). Because 40% of the U.S. Customs and Border Protection (CBP), U.S. Border Patrol's (USBP) resources are currently absorbed in dealing with this crisis, the USBP is not able to effectively manage its other border security missions -- apprehending migrants illegally seeking to evade detection, including criminal aliens and those who pose a public safety or national security threat, uncovering instances of trafficking, fraudulent family relationships and other criminal activity among this population, and monitoring the border for drug smuggling and other contraband. To cover this gap, CBP will need to re-assign an increasing number of CBP officers stationed at ports of entry to assist the USBP in handling the surge in FMU migration.

The surge in FMU migration will continue to soar, endangering more and more children making the treacherous 2,000 mile trek to our border and crossing illegally into the U.S. at dangerous and remote areas between ports of entry (POE), until the dynamics causing this trend are changed. This change requires emergency action by the U.S. Government (USG). The changes proposed by this bipartisan Panel, if all of our recommendations are implemented, could dramatically reduce migration of FMUs from Central America, help to eliminate dangerous and illegal border crossings, as well as improve the care of children who are brought on this harrowing journey by an adult. Implementing these recommendations is essential for the safety and welfare of children living in Central America and elsewhere who will continue to make this dangerous trek and risky border crossing until the USG implements the emergency actions we propose.

Key Findings

As the findings in our report reflect, the large-scale influx of FMUs is new, having increased dramatically in the last year by 600%. Over 53,000 FMU were apprehended last month alone by the Border Patrol, and at the current trajectory, that number of FMU apprehensions is likely to exceed 500,000 in Fiscal Year (FY) 2019.

After being held for several days at inadequate and overcrowded holding areas at USBP stations, most of the adults -- *provided* they have a child with them and have stated that they fear returning to their country of origin -- are issued Notices to Appear (NTA) at a later time before an immigration judge somewhere in the U.S. and then dropped at a local bus station or delivered to already overwhelmed non-profit shelters. The NTA, combined with long delays in the adjudication of asylum claims, means that these migrants are guaranteed several years of living (and in most cases working) in the U.S. Even if the asylum hearing and appeals ultimately go against the migrant, he or she still has the practical option of simply remaining in the U.S. illegally, where the odds of being caught and removed remain very low. A consequence of this broken system, driven by grossly inadequate detention space for family units and a shortage of transportation resources, is a massive increase in illegal crossings of our borders, almost entirely driven by the increase in FMU migration from Central America.

By far, the major "pull factor" is the current practice of releasing with a NTA most illegal migrants who bring a child with them. The crisis is further exacerbated by a 2017 federal court order in *Flores v. DHS* expanding to FMUs a 20-day release requirement contained in a 1997 consent decree, originally applicable only to unaccompanied children (UAC). After being given NTAs, we estimate that 15% or less of FMU will likely be granted asylum. The current time to process an asylum claim for anyone who is not detained is over two years, not counting appeals.

Key Recommendations

To address this crisis in the near term, we recommend a different model for processing FMUs who have crossed our border illegally. While this model cannot be fully implemented without Congressional support, some parts of the model can and should be implemented by the executive branch now and without delay, while Congress considers and enacts the emergency legislation and supplemental appropriation recommended below. Although our full recommendations are reflected in the Interim Report, highlights of our key recommendations are as follows:

Regional Processing Centers

1. Establish and staff 3 to 4 Regional Processing Centers (RPCs) along the border, scalable and with sufficient capacity to shelter all FMUs apprehended at the border and, among other things, provide safe and sanitary shelter, to include medical screening and care, credible fear examinations, vetting for identity and familial relationship, and evaluations for public health and safety, national security and flight risk.
2. Resource and require transport from USBP stations and POEs of all FMUs to an RPC, within 24 hours or less of apprehension.
3. Recommendations 1 and 2 will require an emergency supplemental appropriation with funding to cover the costs of, among other things, erecting and staffing the RPCs, transportation to RPCs to meet the 24-hour requirement and providing health care for minors. We recognize that this may require a supplemental of several billions of dollars for construction and administrative costs, but it is the only way to ensure treatment of migrant children that conforms to our values.
4. Until the RPCs can be established, steps should be taken immediately to relieve the POEs and USBP of all tasks unrelated to their law enforcement mission. That is, all transportation, medical, feeding and caring for migrants should be the responsibility of non-CBP professionals who provide such services, whether by contract or applicable emergency government relief services. These are national security costs that should be included in the emergency supplemental budget request.

Congress Should Enact Emergency Legislation to:

5. Achieve Faster Asylum Processing. At a minimum, legislation is needed to modify asylum procedures, at least temporarily, so that a hearing and decision can be provided to family members within 20 or 30 days. We also are recommending that Congress immediately fund a substantial increase in immigration judges.
6. "*Flores Fix*" -- Roll back the *Flores* Decision by exempting children accompanied by a parent or relative, who is acting as the guardian of the child. DHS also should be given discretion to detain a close relative with a non-parent family member when this is in the best interest of the child.

7. Amend Section 208 of the Immigration Nationality Acts (INA) to require that border crossers make asylum claims at POEs. Simultaneously, CBP will be resourced to begin processing all asylum claims initially presented at a POE and put an end to metering. This can and should occur promptly after this recommendation and Recommendations 1 and 2, above, are implemented.
8. Amend the Trafficking Victims Protection Reauthorization Act (TVPRA) to permit repatriation of any child when the custodial parent residing in the country of origin requests reunification and return of the child. Currently, this is not permitted by the statute.

Emergency Regulatory Action:

9. Enable CBP to take photographs and biometrics of children of any age in order to stem the recycling of children at the border and to rapidly determine the legitimacy of parentage claims.
10. Because the expansion of *Flores* is contributing to the flow of accompanied children, many who are of tender age, DHS should act promptly to limit it by emergency regulation until Congress acts on Recommendation 6 above.

Medical and Child Exploitation Safeguards:

11. Office of Field Operations (OFO) POEs and USBP stations should be supplemented by contracted medical and transport professionals.

International Action:

12. Enter into a North America Family Protection Initiative with Mexico that includes the elements of a Safe Third Agreement.
13. In cooperation with Guatemala, establish a secure shelter to process asylum claimants from Central America in Guatemala, proximate to the Guatemala-Mexican border.

INTRODUCTION

By letter of October 4, 2018, then Department of Homeland Security (DHS) Secretary Kirstjen Nielsen asked the Homeland Security Advisory Council (HSAC) to examine the care of families and children in the temporary custody of CBP, including its component division, the USBP.¹ The HSAC created a CBP Family and Child Custody Panel (hereafter the “Panel”) as a subcommittee of the HSAC to “provide findings and recommendations on the best practices of other federal, state and local organizations regarding care for families and children in CBP custody.” As part of the Secretary’s direction, the Panel was directed to conduct border visits and interviews to observe and understand CBP’s “unique operating environment and infrastructure,” meet with experts to identify best practices for the processing and care of children in custody, and recommend any needed changes to CBP policies, procedures or training.

Since its inception approximately five months ago, the Panel increased its membership to include a practicing pediatrician who is a national expert on the maltreatment of children. Overall, the ten-member Panel is politically bipartisan and comprised of experts in the various areas under review. Almost half are lawyers with one previously a federal judge. The Panel includes two former Commissioners of CBP, two former Administrators of the Drug Enforcement Administration, former officials of DHS and the Department of Justice (DOJ) who are immigration policy legal experts, the Director of Immigration and Cross-Border Policy with the Bipartisan Policy Center, a former U.S. Ambassador to Mexico who also served in leadership positions in Congress and the White House in a prior Administration, the Chief Executive Officer of the National Center for Missing and Exploited Children (NCMEC) and former Director of the U.S. Marshal’s Service, and the Deputy Director of the Arizona Department of Emergency and Military Affairs, Director, Division of Emergency Management.²

The Panel has met in person and telephonically multiple times to interview more than 109 subject matter experts who included multiple medical professionals, the American Academy of Pediatrics, dozens of representatives from CBP, DHS, Health and Human Services (HHS) and the DOJ, as well as various stakeholders, more than 17 Non-Government Organizations (NGO), and 3 global protection organizations. Notably, the Panel conducted multi-day site visits to every state along the Southwest Border (SWB) with a focus on the areas suffering from some of the larger influxes of families and children illegally entering the U.S. Specifically, the Panel visited 6 of the 9 USBP SWB sectors to include 10 USBP stations and 4 POEs within the OFO, reviewed numerous reports by multiple Inspectors General and the Government Accounting Office, and gathered and reviewed a prodigious amount of data from the various subject matter experts.³

On February 28, 2019, this Panel reported its early findings confirming the crisis at the SWB – on both national security and humanitarian grounds – urging that our country and migrant children are

¹See Appendix C. DHS Secretary Nielsen’s signed HSAC Tasking Memo, *Four New Homeland Security Advisory Council (HSAC) Taskings, October 4, 2018*. As the Panel’s report was being written, Secretary Nielsen resigned and on April 10, 2019, then CBP Commissioner Kevin K. McAleenan assumed the position of Acting Secretary of Homeland Security.

²See Appendix B. Panel Member Biographies.

³See Appendix D - Subject Matter Experts and Other Witnesses, Appendix E - Meetings and Site Visits and Appendix F - References.

in serious danger.⁴ Over the past several months, DHS and CBP have introduced a number of important measures to address the crisis independently of the Panel. However, with the situation at the border reaching catastrophic levels, this bipartisan Panel believes our recommendations cannot await our final report in May 2019. This interim report and our emergency recommendations address the most urgent needs regarding the custody and care of family and children populations and those necessary to restore CBP to its primary law enforcement mission to protect our homeland security by controlling our Nation's borders.

Although CBP has already implemented some of the recommended emergency measures, such as increased health screenings for all children apprehended at the border, it is still phasing in medical professionals so not all stations have them or have them 24/7, leaving those stations without to meet these requirements, in part, by diverting medically trained CBP personnel from their enforcement duties. A solution to the broader problem requires us to look beyond CBP to all the resources of DHS, to include not just CBP but also Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO), U.S. Citizenship and Immigration Services (USCIS), and indeed to the whole of the U.S. government, all three branches. It quickly became apparent to the Panel that the primary problem is the continuing surge of FMUs from Central America to our borders and that properly caring for this population and stemming this flow, in order for CBP to return to its critical homeland security mission, requires an urgent whole of government effort if there is to be any hope of mitigating dangers to children who are brought to our border as FMUs. This issue has consumed the Panel's energy and efforts. Its solution requires emergency action.

⁴See *U.S. Department of Homeland Security, Homeland Security Advisory Council Public Teleconference Call Subcommittee Progress Update February 28, 2019*, transcript of telephonic report to the HSAC. <https://www.dhs.gov/sites/default/files/publications/February%2028%2C%202019%2C%20Executive%20Summary%20Final.pdf>

KEY FINDINGS

1. We commend the men and women of CBP, including the OFO officers and USBP agents, for their unfaltering devotion to duty and professionalism during this crisis. There are countless examples of their valiant attempts to aid families and children who have entered our country illegally and still attempt to perform their law enforcement mission to protect our country. However, it is not humanly possible to do both. On any given day, CBP is at half strength or less “on the line” in places at the border, endangering themselves and the country. Turned on its head, CBP personnel are instead tending to the daily needs of thousands of illegal migrants who CBP has already processed but is left holding for days and sometimes weeks in confinement space that was built decades ago and designed to confine only a fraction of these illegal migrants for hours, not days or weeks, and certainly not intended to confine tender age children. One of the highest priorities must be to immediately relieve CBP of all tasks unrelated to its law enforcement mission. The security of our country is at grave risk until then.
2. Tender age children are at the heart of the crisis. Most, 73%, of the children in FMUs illegally crossing our border are tender aged, being 12 or younger.
3. The unabated 600% surge of FMUs from Central America to our borders and properly caring for this population have overwhelmed the entire government and brought our border security and immigration management systems to the point of collapse. Although the increase in FMUs began in FY2014, it has recently spiked, after a significant drop in FY2017. In March FY2017, FMU apprehensions accounted for less than 1% (.3%) of all USBP apprehensions. Currently, they constitute nearly 60% (57.6%) of all apprehensions.⁵
4. Apprehensions by USBP, currently at levels not seen in a decade, will approach one million in FY19 unless actions are immediately taken.
5. Migrant children are traumatized during their journey to and into the U.S. The journey from Central America through Mexico to remote regions of the U.S. border is a dangerous one for the children involved, as well as for their parent. There are credible reports that female parents of minor children have been raped, that many migrants are robbed, and that they and their child are held hostage and extorted for money.
6. Criminal migrant smuggling organizations are preying upon these desperate populations, encouraging their migration to the border despite the dangers, especially in remote places designed to overwhelm existing USBP infrastructure, and extorting migrants along the way, thereby reaping millions of dollars for themselves and the drug cartels who also charge money to cross the border.
7. A substantial number of families and children are entering our country in remote areas of the border versus the POEs, enduring dangerous and terrifying crossings in remote desert areas, across rivers, over fences, and through razor wire. These children increasingly require significant personal and medical care that exceeds the ability and capacity of CBP even with their current patchwork of contracted assistance. Despite CBP’s creative and humane attempts to care for these children during their confinement, CBP facilities, both at USBP stations and POEs, are grossly inadequate.

⁵See Appendix A – Family Unit Apprehension Data

8. Families should not be separated during detention, but current laws do not give CBP discretion to keep children together with a grandparent or other close relative acting in a guardian-type role other than their parent.
9. FMUs illegally crossing our border consist of adults who are bringing a child with them, and most are being released into the U.S. with a NTA due to a shortage of detention capacity for FMUs.
10. Children who are crossing the borders of the U.S. are at great risk for multiple medical problems, which include but are not limited to, dehydration, malnutrition, infections, psychological trauma, physical injuries and all aspects of child maltreatment. Many of these sequelae are not necessarily evident within the context of a non-medical evaluation. An expectation for clinical acumen by CBP agents and officers is highly unrealistic. Even medical personnel need to have a higher level of expertise to anticipate some of the potential infectious disease complications that can be found in this population of children.
11. It is unrealistic to have doctors at every USBP station where a large group of families may or may not show up on a given day. However, each POE and USBP station should be provided ancillary contracted medical support 24/7 during operational hours⁶ -- e.g., Pediatric or Family Medicine Nurse Practitioners and/or Physician Assistants, Physicians enrolled in Graduate Medical Education or Department of Defense (DOD) health care providers in training with appropriate supervision from their medical treatment facilities. An examination room should be made available for these providers and equipped appropriately, to include exam tables and equipment designed to prevent the transmission of communicable diseases.
12. Until the RPCs are established, the USBP will continue to be dependent on community emergency rooms and other medical facilities, as well as local emergency transport systems, which, in turn, significantly and negatively impacts the USBP mission and manpower.
13. Some adults accompanied by a child revealed during CBP processing, that they were encouraged to bring a child with them by criminal smuggling organizations that are paid to transport the migrant and child to the U.S. border from Central America.
14. Children are being exploited and placed in danger in many ways –
 - Adults fraudulently claiming parentage to a child to gain entry to the U.S. are increasing.
 - Some children are being re-cycled by criminal smuggling organizations, *i.e.* returned to Central America to accompany a separate, unrelated adult on another treacherous journey through Mexico to the U.S. border.
 - Human traffickers have extracted additional fees as a form of indentured servitude from FMUs who were released with NTAs and made their way to the interior of the U.S.
 - The risk for commercial sexual exploitation of these children and teens is predictably high and will be very difficult to prevent after transport or release into the interior U.S.
15. More recently, with the expanding crisis, CBP directed that FMUs be released with a NTA within a few days after their surrender to the USBP and preliminary processing. None of these migrants released with a NTA have been given a credible fear interview prior to their release, because there are no USCIS credible fear examiners at USBP stations. Further, these FMUs are not detained by ICE ERO due to their lack of capacity to detain FMUs. ICE ERO has effective capacity to detain only 2,500 FMUs, and that capacity is woefully inadequate given the surge in FMU migration over the past year. Those relatively few FMUs that ICE

⁶Until the appropriate contracts are established, services could be rendered under the National Response Framework, Emergency Support Function #8 Public Health and Medical. Health and Human Services is the lead agency and has multiple alternatives at their disposal within the federal government to support fulfillment of this requirement.

ERO does detain, however, are given credible fear examinations if they express a fear of return to their home countries.

16. Given recent decision rates, only a small percentage of FMUs being released with NTAs are being granted asylum (including the number of persons given NTAs who do not end up actually filing an asylum claim). Of those who actually file asylum claims, whether they have crossed the border or are visa overstays, approximately 80% ultimately are not granted. During the first quarter of FY19, the DOJ Executive Office for Immigration Review (EOIR) reports that less than 15% of the asylum claims of Central Americans who have been given a credible fear interview are actually granted.⁷ Despite the interests of the U.S. in enforcing the court ordered removal of unsuccessful asylum seekers, very few non-detained asylum claimants whose claims are denied are actually ever located and deported from the U.S.
17. Based on EOIR data for non-detained asylum applicants, it takes, on average, 2.5 years before an asylum claim is adjudicated by an immigration judge. For cases that are appealed, either to the Board of Immigration Appeals (BIA) or further to the federal district courts, it can be up to five years before a final decision is reached. An appeal to the BIA on average adds another 8 months to the process, extending the process for final adjudication of an asylum claim to over 3.3 years. In cases where a U.S. Court of Appeals then grants a stay of removal, it can take up to another 2 years for the final appeal to be decided. This means that an individual or family seeking asylum can remain in the U.S. for 4-5 years pursuing an unmeritorious case before a removal order can be executed.
18. The dramatic increase in FMU apprehensions over the past year is directly linked to the U.S. government -- executive, legislative and judicial branches -- creating “pull factors” that incentivize migrants to bring a child with them to gain entry to and release into the U.S.
19. In the short term, CBP is doing triage. It has already re-assigned 545 CBP OFO officers to assist USBP. Currently, approximately 6,643 (40%) of the 16,608 USBP agents assigned to the SWB are diverted to processing, holding, medical care, transport, and hospital watches relating to the surge of FMUs. Currently, CBP has only 6,889 CBP officers at the POEs on the SWB. If all CBP officers were assigned to assist the USBP, there would be no CBP officer to staff the POEs and none to do the processing of legitimate trade and travel from Mexico. This crisis, unless controlled soon, could well cause the shutdown of these POEs.
20. The emergency recommendations outlined below are not a panacea, standing alone. However, without rapid action, our border enforcement and immigration management efforts will continue to collapse under the weight of continuously increasing FMUs from Central America and elsewhere and be a magnet for criminal elements seeking entry to the U.S., placing many more children in danger.

⁷ See EOIR *Adjudication Statistics* as of January 30, 2019, at <https://www.justice.gov/eoir/page/file/1111476/download>

EMERGENCY RECOMMENDATIONS

1. Emergency Legislative Recommendations

- a. Enact emergency legislation to limit the scope of the *Flores* consent decree to unaccompanied minors.⁸
- b. Amend Section 208 of the INA to require border crossers to present asylum claims at a U.S. POE, unless extraordinary circumstances exist that preclude this.⁹
- c. Amend the TVPRA to permit repatriation of a child to a custodial parent in their country of origin, provided this can be safely done.
- d. Amend current law to allow DHS to exercise discretion to keep together a FMU of a child and other than a parent or legal guardian with one degree of separation, e.g., grandparent, uncle, etc., except in circumstances when there is apparent danger to the child of such an arrangement.
- e. Enact an emergency supplemental funding bill to cover costs associated with adopting our recommendations. Working with DHS and other impacted departments of government, the Office of Management and Budget (OMB) should promptly submit an emergency supplemental budget request to fund the foregoing.

2. Emergency Regulatory Changes

- a. Amend 8 CFR Section 235.1 to remove the exemption of “Aliens younger than 14.... on date of admission” to enable CBP to take photographs and biometrics of children of any age in order to stem the recycling of children at the border and to rapidly determine the legitimacy of parentage claims.
- b. Because the expansion of *Flores* is contributing to the flow of accompanied children, many who are of tender age, DHS should act promptly to limit it by emergency regulation until Congress acts on Recommendation 1a above.

⁸Emergency legislation is needed that limits *Flores* to unaccompanied minors, but if such legislation is delayed, we recommend that this be done by emergency regulation that, because of the FMU migration crisis, dispenses with ordinary Notice and Rulemaking. The emergency regulation would recognize that, unlike UACs, in some cases FMUs must be held beyond 20 days in order to (1) determine whether there is an actual parental relationship, (2) establish identity, (3) conduct (an unhurried) credible fear interview, (4) make sure the child's healthcare is examined and any issues, especially communicable diseases are taken care of before release for the sake of the child and to assure public health is not threatened in interior urban areas to which the FMUs intend to alight upon release, (5) keep the FMUs intact if it is ineligible for asylum or otherwise, (6) schedule expeditious chartered repatriation for those who are subject to expedited removal, and/or (7) for those eligible after credible fear interview, and based on a release more time to effect a safe and orderly re-settlement. Whether a *Flores* roll-back is by emergency regulation or as part of emergency legislation, this recommendation is too important and too urgent to reducing risk to accompanied children to be delayed any longer. The lives of children who will be making the treacherous journey are at risk.

⁹Section 208 of the INA currently permits a border crosser to make an asylum claim by placing a foot anywhere on U.S. soil. The federal courts have made clear that a law of Congress is necessary to change this, i.e., INA Section 208 cannot be changed by Presidential proclamation or executive order. Only Congress can change this law, and it should do so without delay as part of emergency legislation needed to protect children from dangerous crossings across the border. We do not exaggerate when we say that the lives of tender aged children are at stake and at risk every day Congress fails to act to amend Section 208.

3. Temporary Regional Processing Centers (RPCs) for All FMUs

- a. Establish 3-4 temporary, scalable processing centers along the SWB.
- b. Transport all FMU migrants to the nearest RPC as soon as possible but no later than 24 hours after apprehension by USBP between POEs and CBP officers at POEs.¹⁰
- c. Require all processing at the RPCs – e.g., criminal, identity and parentage/DNA checks, medical screenings and mitigation of health risks by health care professionals and, until a Rapid Adjudication of FMUs asylum claims can be put in place, credible fear examinations.
- d. Establish an accelerated “rocket-docket” process for asylum claims of FMUs once the *Flores* legislative fix is in place and its 20-day limitation on accompanied minors is removed. This expedited process will provide for Rapid Adjudication of Family Unit Asylum Claims at the RPCs with co-located USCIS asylum officers, immigration judges with no other docket, interpreters, and ICE Attorneys. DOJ on an emergency basis must add several hundred immigration judges dedicated solely to the FMUs asylum claims docket. This rapid asylum processing, when in place, will substitute for credible fear examinations, but still lead to the rapid removal of FMUs who do not qualify for asylum. Consideration also should be given to the temporary creation of a unit of government (EOIR) funded immigration counsel (similar to public defenders) as utilized in the 2014-15 surge.
- e. Until the RPCs can be established, steps should be taken immediately to relieve the POEs and USBP of all tasks unrelated to their law enforcement mission. That is, all transportation, medical, feeding and caring for migrants should be the responsibility of non-CBP professionals who provide such services, whether by contract or applicable emergency government relief services. These are national security costs that should be included in the emergency supplemental budget request.

This RPC recommendation warrants brief elaboration. It contemplates that within 45 days, DHS, with full support of other departments of government, including the DOD,¹¹ will establish temporary, scalable regional detention/processing space (RPCs) at 3 or 4 locations proximate to the SWB. The RPCs may consist of tents or other non-permanent structures that can rapidly be put in place. The requirement is that that these RPCs have sufficient bed, quarantine infirmary space to detain all FMUs apprehended at or near the SWB for a minimum of 20 days. All locations are to be sited within approximately 250-300 miles at their furthest from any spot on the SWB. Possible locations include Rio Grande Valley, El Paso, Yuma and immediately available current and excess military bases. Establishment of the first RPC should begin immediately, within 30 days.

¹⁰ As noted in our Findings, the transportation and detention system for FMUs has collapsed due to the huge numbers of FMUs illegally crossing the U.S. border. Assuring rapid 24-hour or less transport, not just from USBP stations but also POEs, will have the collateral benefit of substantially increasing the through put of FMU through POEs and shorten wait times. Additional costs for transport to meet the 24-hour requirement shall be included in the Emergency Supplemental.

¹¹ DOD or Federal Emergency Management Agency (FEMA) should be immediately tasked to erect the RPCs, possibly on existing or excess military property or on existing government owned properties, working in coordination with the General Services Administration (GSA). Whichever agency constructs the RPCs, and however the initial funds are re-allocated or re-programmed to get this started immediately, should be reimbursed via an Emergency Supplemental appropriation.

The RPCs should have sufficient medical staff with physicians specializing in Pediatric or Family medicine, nurse practitioners and physician assistants, licensed social workers, mental health professionals, and dieticians. Health care evaluations will require some aspect of laboratory and field level X-ray support. These health officials should consider issuing a medical “passport” for children exiting the custody of RPCs that identifies significant medical problems as well as any immunizations provided before their release, which would be beneficial to destination communities and their public health systems and avoid the very high risk of these children becoming lost to monitoring.

Our recommendation contemplates that DHS will operate and manage the RPCs as a whole of DHS effort. That is to say, staffing to manage the processing will be provided by CBP, both USBP and OFO, ICE ERO and USCIS. Staffing costs and TDY are to be included in the Emergency Supplemental. Required processing,¹² including medical screening by healthcare professionals will take place at RPCs.

If this and our other emergency legislative recommendations are adopted, we would expect a sharp decline in the number of FMUs apprehended by the USBP in remote and treacherous areas of our border in less than 12 months. In other words, DHS will be able to scale back some of the RPCs and/or some of their capacity within 12 months. That is why we do not envision RPCs as permanent structures. However, if we only establish RPCs, while they will help meet our humanitarian responsibilities, they alone, although costly, are not likely to substantially reduce the surge in FMU migration.

4. Rapid Adjudication of Asylum Claims of Family Units at RPCs

- a. Co-locate USCIS asylum officers at RPCs.
- b. Until this recommendation can be fully implemented together with a *Flores* fix, conduct credible fear examinations of FMUs expressing fear of return to their home country and use expedited removal to repatriate those who are not found to have a credible fear of persecution to qualify for asylum.
- c. Increase the number of Immigration Judges by another 300 with the single goal of resolving all FMU asylum claims at the immigration court stage within twenty days or less.¹³ Assist

¹² **Required Processing at RPCs.** As a matter of DHS policy, no NTAs shall be issued without up to 20-day processing that includes medical examinations and credible fear determinations being made at an RPC. All FMUs will get medical screenings by health care professionals. They will also receive security screenings, including establishing identity and family relationship, before being released into the interior of the U.S. Any public health issues that could impact populated interior areas of the U.S. relating to contagious diseases and the like will be assessed at a RPC by public health professionals and be mitigated before release. RPCs will have separate space for quarantining illegal migrants with infectious diseases. Criminal history of the adult, including in his/her country of origin, will be checked and evaluated for potential criminality before release into the interior of the U.S. Likewise any and all national security concerns are to be addressed before release. An assessment must be made regarding whether there is a true parental relationship, including where appropriate through interviews and DNA testing. Part of the processing at the RPC should include capturing photographs and the most cost effective biometric identifiers (e.g., Rapid DNA, iris, finger or vein scans) of all children and family members to determine if children are being repeatedly trafficked across the border and as a check on family fraud.

¹³ To assist in ramping up the number of additional immigration judges, consideration should be given to establishing a reserve corps of retired immigration judges willing to serve in a temporary duty capacity.

- this goal by providing counsel to individuals without counsel so that they cannot obtain continuances due to lack of counsel.
- d. Co-locate immigration judges at the RPCs or provide immigration court proceedings at the RPCs via remote video.
 - e. New immigration judges should be assigned to prioritize FMU asylum claims. They should have no other cases on their docket until FMU cases are decided.
 - f. Consider temporary or permanent statutory changes to streamline and expedite the adjudication of FMU asylum claims.
 - g. Narrow Grounds for Asylum Claims -- the Attorney General should use his authority to limit grounds for asylum claims to be coterminous with, but not exceed U.S. treaty obligations.

The overall objective of these recommendations is to restore a system capable of prioritization and rapid resolution of asylum claims made by FMUs. One of the greatest deterrents to FMU migration would be the relatively prompt repatriation of FMUs to their country of origin when they do not qualify for asylum. Since the majority would not likely qualify for asylum, it would be best if this decision could be made earlier, before they are given NTAs and are released into the interior of the U.S.

5. Near-term International Actions by the U.S.

- a. North American Family Protection Initiative, Safe Third Agreement and Bilateral Cooperation with Mexico

DHS, with full assistance and support of the State Department and other elements of the federal government, should propose and negotiate a North American Family Protection Initiative (NAFPI) that includes the essential elements of a Safe Third Agreement with Mexico¹⁴ and also calls for bilateral cooperative and coordinated efforts with Mexico to address “push factors” in the Northern Triangle countries of Central America.

A bilateral agreement with Mexico is the single most important action capable of managing the movement of FMUs from Central America into Mexico and ultimately across its border into the U.S. Correctly understood, such an agreement would be in the best interests of both the U.S. and Mexico¹⁵ and, as it will result in a more orderly, safer and managed process for

¹⁴ We have had a safe third agreement with Canada for years. Such an agreement postulates that if a person is truly escaping death or persecution in, say, Guatemala, he must make his asylum claim in the first safe country in which he alights, that is, Mexico. The likely effect of a Safe Third agreement is to dramatically reduce the number of migrants with a child in tow from Central America. To the extent that Mexico requests it, the U.S. should provide assistance to Mexico for housing and expanding its asylum processing capacity in connection with its agreement to Safe Third. The importance of a Safe Third Agreement, and its recognition of the capacity of the government of Mexico to implement it, speaks volumes regarding how far Mexico has come in developing its democracy and institutions and the strength of the Mexico-U.S. bilateral relationship. Without a safe third agreement, it will be necessary for CBP to re-direct a significant number of CBP officers from our nation's POEs, including those who process commercial shipments and people into the U.S. from Mexico, to USBP stations and Regional Processing Centers or “RPCs”.

¹⁵ The benefits to Mexico from such an agreement may not be apparent, but they are substantial. The reality is that many Northern Triangle FMU migrants are making the journey to reunite with family or escape poverty and are unlikely to qualify for asylum in the U.S. If a Safe Third arrangement is agreed to, it is contemplated that Mexico will enhance its process for asylum so that it is substantially equivalent to ours and that Mexico will provide appropriate protection for asylees in its territory. Although Mexico has also seen an increase in asylum claims from the Northern

requesting asylum in either country, it would also be in the best interests of children and vulnerable migrants currently subjecting themselves to criminal smugglers and dangerous journeys.

b. Establish a Secure RPC Facility in Guatemala

The USG should negotiate an agreement with Guatemala that provides appropriate USG support to the government of Guatemala, whereby the United States is permitted to promptly erect a safe and secure RPC-type shelter in Guatemala, proximate to the Guatemala-Mexico border, that permits processing by the USG of asylum claimants from the Northern Triangle nations in Guatemala.

This safe and secure processing center, like the RPCs in the U.S., should be staffed by USCIS asylum officers and immigration judges on site or by video and provide the asylum seekers with appropriate security, health and social services. This step would obviate the need for parents to risk his or her child on a perilous journey through Mexico to dangerous U.S. border crossing areas.

6. Recommendations for Medical and Child Exploitation Safeguards

- a. OFO POEs and USBP stations should be supplemented by contracted medical and transport professionals, with Emergency Medical Technician (EMT) trained agents and officers utilized only as a last resort.

In many cases, there will be value in having pediatric and other medical professionals on call for telemedicine consultations and even examinations. This requires privacy, examination basics, bandwidth, and a set of contractual relationships with doctors who understand the exigencies of USBP detention and transportation. These relationships could be established through university Graduate Medical Education programs, though appropriate Internet support will be necessary. That said, none of the Panel believes that USBP can ever be expected to safely handle serious medical emergencies on a no-notice basis. Contracted transport to and treatment by medical professionals is the only realistic option for serious injury or disease.

- b. Video-monitoring surveillance should be installed at all POEs, USBP stations and RPCs with multiple warnings of this surveillance to all children in CBP custody to assist in the prevention of situational child sexual abuse. In the event of a possible completed sexual assault, remote forensic examination technology already exists to accomplish an acceptable examination and such medical evaluations are already a standard of care in several states.

Triangle, such an agreement might not mean that Mexico would continue to see the vast numbers that are currently leaving the Northern Triangle countries and illegally crossing Mexico's southern border. If the majority of the Central American FMUs are seeking entry into the U.S., not Mexico, then the understanding that they would be expected to make their claims in Mexico rather than in the U.S. may itself change their decision to migrate.

c. Implement CBP Training, as follows:

- CBP personnel should be professionally trained to focus specifically on physical evidence of illness for the brief period between apprehension and transfer of the FMUs to the RPCs or other agencies. Some signs of such illnesses are only able to be noted from history provided by parents and caregivers. The specific areas which should be noted if at all possible, would be severe respiratory symptoms (e.g. coughing, shortness of breath, wheezing, cyanosis etc.), fever, severe gastrointestinal symptoms (e.g. persistent vomiting and/or diarrhea with particular attention to bloody diarrhea), and skin rashes or facial swelling that might indicate highly infectious diseases such as measles, mumps or chickenpox. The necessity for quarantine must be considered when these diseases become apparent.
- Training regarding the vulnerabilities to and indicators of Child Sexual Exploitation and Effective Responses to Missing Migrant Children by leveraging NCMEC Resources.¹⁶
- Procedures and training for CBP personnel to report incidents of suspected child sexual abuse/exploitation directly to the NCMEC CyberTipline, which is the national clearinghouse and portal for reporting suspected incidents of child sexual abuse.

7. DHS Commander/Coordinator

The Acting DHS Secretary should consider designating a high level, knowledgeable, whole of DHS operational Commander with full authority to act on his behalf, and with the full support of the White House, to engage and coordinate an interagency process to assure a whole of USG approach to achieve the foregoing goals – e.g., the rapid construction of RPCs, staffing the RPCs with personnel from the various government agencies required for its success, redirecting and utilizing personnel of DHS component agencies to staff the RPCs, and assuring that the 24 hour transportation requirement is met, etc. Other executive branch departments to be engaged include DOD, DOJ, and HHS, in order to optimally coordinate actions needed to achieve the emergency goal as quickly as possible.

The DHS Commander/Coordinator would be needed on a temporary (6-12 month) basis to marshal the resources of DHS, and secure support from other departments and agencies, to focus them squarely on fixing the problem. Part of the breakdown that led to FMUs being held for longer periods in USBP custody than is desirable and to the release of FMUs with NTAs without even a credible fear interview or other vetting, is the division of roles and responsibilities within DHS among CBP, ICE and USCIS. In addition to leading the interagency process, the DHS Commander/Coordinator also would be responsible for leading the unity of effort among these DHS components and others, such as FEMA. Given the fact that one or more federal departments or agencies are needed and/or already providing support, calling upon FEMA should be considered. The National Response Framework (NRF) and its

¹⁶ NCMEC's 35-year history of providing a comprehensive approach to help find missing children, reduce child sexual exploitation, and prevent child victimization can be leveraged to inform and support training efforts. Best practices have been identified through NCMEC's provision of analysis, technical assistance, victim support services, case management services, trends, and indicators. Migrant children who are placed with sponsors, extended family, or social services may run away from those placements and possess many risk factors and vulnerabilities for sexual exploitation. CBP, social workers, sponsors, and foster parents could help ensure prevention practices are taking place, indicators are recognized and best practices for response are known in an effort to better protect migrant children.

fundamental principles also may be applicable specifically during a time of crisis, as here.¹⁷ The goal of this coordinated inter and intra agency DHS led team would be to manage, care for, and within 6-12 months, dramatically reduce the number of FMUs illegally entering the United States.

¹⁷ This whole of DHS and federal enterprise effort fully aligns with Presidential Policy Directive 8 (PPD-8): National Preparedness, and Homeland Security Policy Directive-5 (HSPD-5): Management of Domestic Incidents. Specifically, HSPD-5 states "The Secretary shall coordinate the Federal Government's resources utilized in response to or recovery from terrorist attacks, major disasters, or other emergencies if and when any one of the following conditions applies: (3) more than one Federal department or agency has become substantially involved in responding to the incident; or (4) the Secretary has been directed to assume responsibility for managing the domestic incident by the President. DHS.gov. (2019, April 04). Homeland Security Presidential Directive 5. Retrieved April 07, 2019, from <https://www.dhs.gov/publication/homeland-security-presidential-directive-5> The following emergency support function (ESF) areas, within the NRF, are minimum recommendations for immediate implementation to help address this humanitarian crisis: ESF #5: Information and Planning (DHS/FEMA) which includes coordination amongst all federal departments/agencies supporting the RPC; ESF #6 Mass - Care to support feeding, sheltering and other resources for proper health and hygiene for migrants, as well as succinct coordination with external NGO and Faith-Based Organizations supplementing support following migrant release from ICE-ORO (DHS/FEMA); ESF #7 Logistics to address needs such as transportation, acquisition of RPC locations and security services that do not require a badged agent (i.e. monitoring during hospital treatment or stays for migrant population), etc (DHS/FEMA); ESF #8 Public Health and Medical to provide appropriate medical screening/care, immunizations, social work, and psychological screening (HHS); and ESF #15 External Affairs (DHS) and unified public messaging.

CONCLUSION

This is the Panel's interim report. Given the steadily increasing severity of this humanitarian crisis, the Panel believes it a matter of great urgency to provide the Secretary with these emergency recommendations for immediate action without further delay. In due course, we will issue a final report on or about May 21, 2019, which will provide our longer term recommendations.

APPENDIX A - FAMILY UNIT APPREHENSION DATA

Figure 1

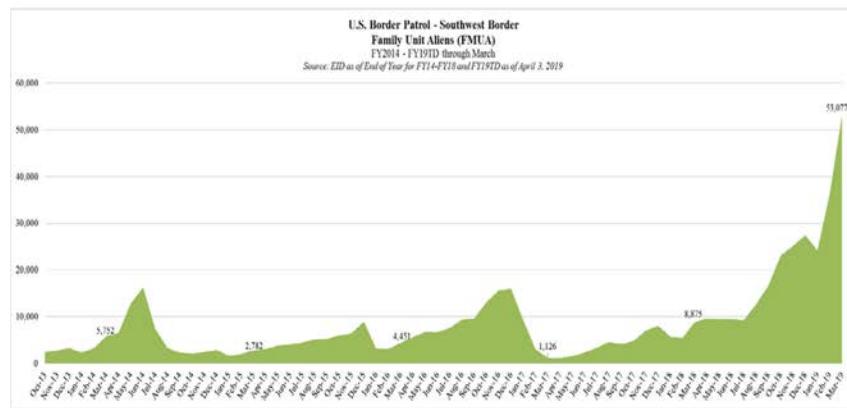
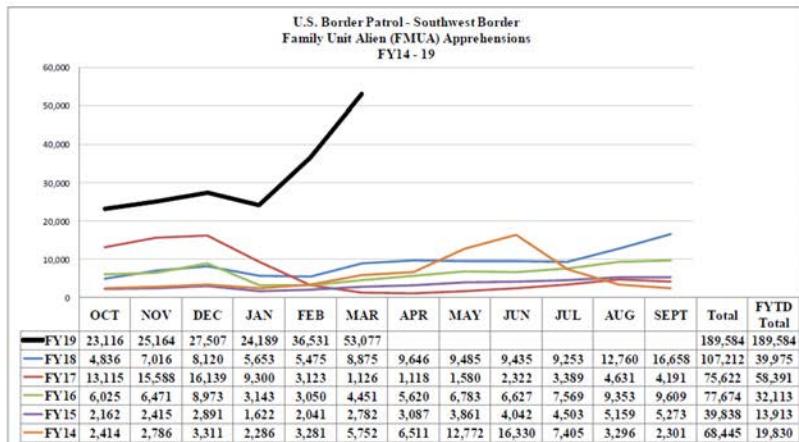


Figure 2



APPENDIX B – PANEL MEMBER BIOGRAPHIES

Karen Tandy (Chair)
Administrator (Ret.), Drug Enforcement Administration
 Initially Appointed by Secretary Jeh Johnson – May 2016

Karen Tandy served as the Administrator of the U.S. Drug Enforcement Administration (DEA) from July 2003 to November 2007. During her tenure, the DEA saw unprecedented improvements in its performance and accountability standards. Ms. Tandy is also a former Associate Deputy Attorney General for the Department of Justice (DOJ), where she was responsible for developing national drug enforcement policy and strategies. She held a variety of positions in the Criminal Division at DOJ and was an Assistant U.S. Attorney in the Eastern District of Virginia and the Western District of Washington. In 2007, she became the Senior Vice President of International Government Affairs for Motorola Solutions Inc., where she worked as Motorola's top public policy spokesperson. In that role, she oversaw Motorola's country management, governance, and compliance issues in over 70 countries, and worked on telecommunications policy and trade regulation issues. Ms. Tandy has a B.S. in Education and a J.D. from Texas Tech University. Ms. Tandy is licensed to practice law in Texas and Virginia.

Jayson P. Ahern (Co-Chair)
Principal and Head of Security Services, The Chertoff Group
 Initially Appointed by Secretary Kirstjen Nielsen – September 2018

Jay Ahern is the Principal and Head of Security Services at The Chertoff Group. In this role, he advises clients on a broad range of issues including homeland and border security management, global commerce and supply chain security, critical infrastructure protection, risk management, and strategic planning/implementation.

Mr. Ahern served as a law enforcement professional for 33 years and as the former Acting Commissioner of U.S. Customs and Border Protection (CBP) at the Department of Homeland Security. During his time as Acting Commissioner, Mr. Ahern was responsible for securing, managing, and controlling our nation's borders. With service in both domestic and foreign locations, he directed the agency's 58,000 employee workforce to keep terrorists and terrorist weapons out of the country, while also carrying out CBP's other border-related responsibilities. At The Chertoff Group, Mr. Ahern understands the dangers that face America and American businesses operating around the world. He counsels global clients on how to effectively manage risk while incorporating a proper mix of people, processes, and technology to achieve their security goals. Through an intelligence-driven approach, he advises clients on how to secure their most critical assets, train and exercise employees to respond to emergency incidents, and create sound frameworks to optimize security operations.

Stewart A. Baker
Partner, Steptoe & Johnson
 Initially Appointed by Secretary Kirstjen Nielsen – September 2018

Stewart A. Baker is a partner in the Washington office of Steptoe & Johnson LLP. He is the former Assistant Secretary of Policy at DHS. At DHS, Mr. Baker created and staffed the 250-personnel

DHS Policy Directorate. He was responsible for policy analysis across the Department, including the Department's International Affairs, strategic planning and relationships with law enforcement, and public advisory committees. This work required a broad understanding of all aspects of the Department's activities, including; maritime regulation, customs enforcement, immigration enforcement, identity management, implementation of the SAFETY Act, money laundering enforcement, government contracts, and regulation of travel and air transportation.

Robert C. Bonner
Principal, Bonner ADR Services

Robert C. Bonner is a retired partner of Gibson, Dunn & Crutcher international law firm and formerly the senior principal of the Sentinel HS Group, LLC, a Washington, D.C.-based homeland security consulting firm that provides strategic advice regarding homeland and border security issues. He is currently the principal of Bonner ADR Services. Mr. Bonner has held several positions in the federal government. In September 2001 Mr. Bonner was appointed Commissioner of the U.S. Customs Service, and served until 2006 as the first Commissioner of U.S. Customs and Border Protection (CBP). Mr. Bonner is also a former Administrator of the Drug Enforcement Administration (DEA), U.S. District Judge and United States Attorney for the Central District of California. He was the chair of the California Commission on Judicial Performance and currently serves on the board of trustees of the California Institute of Technology. Mr. Bonner received a B.A. from the University of Maryland, College Park in 1963 and a J.D. from Georgetown University Law Center 1966.

Theresa Cardinal Brown
Bipartisan Policy Center, Director of Immigration and Cross-Border Policy

Theresa Cardinal Brown is BPC's director of immigration and cross-border policy. She came to BPC from her own consulting firm, Cardinal North Strategies, LLC. Brown was director of immigration and border policy at the U.S. Chamber of Commerce; associate director of business immigration advocacy at the American Immigration Lawyers Association; and worked in the immigration practices of large Washington, D.C.-based law firms. She also served as a director and of counsel at The Sentinel HS Group, LLC. She was a policy advisor in the office of the commissioner of U.S. Customs and Border Protection, and was on Homeland Security Secretary Michael Chertoff's Second Stage Review of USCIS. In 2005 and 2006, she became a member and later director of the Immigration Legislation Task Force in the Department of Homeland Security (DHS) Office of Policy. She then served as the first DHS director of Canadian affairs, and subsequently as the first DHS attaché at the U.S. Embassy in Ottawa. Brown does extensive media outreach in her role at BPC, including appearances on Fox News, NPR Morning Edition, PBS NewsHour, CNN International, and BBC World. Brown is a Phi Beta Kappa graduate of the University of Delaware, with a degree in international relations and economics.

John Clark
CEO, National Center for Missing and Exploited Children

John F. Clark, former director of the United States Marshals Service and longtime child advocate, is the president and CEO of the National Center for Missing & Exploited Children.

After an extensive nationwide search, NCMEC's Board of Directors unanimously chose Clark to lead the nonprofit organization, which was designated by Congress in 1984 to work in partnership with the U.S. Department of Justice on issues related to missing and exploited children. He took the helm of the Alexandria, Virginia-based organization on Dec. 7, 2015.

Clark, whose career with the USMS spanned 28 years, was appointed in 2006 as its ninth director by then-President George W. Bush and confirmed by the Senate. In 2011, Clark joined Lockheed Martin Corp. as its director of security, where he managed a \$24 million budget and led a workforce of 250 professionals for the nation's largest defense contractor.

As director of the U.S. Marshals Service, Clark oversaw the daily operation of 94 district offices, 218 sub-offices, three foreign field offices and seven regional fugitive task force offices. He managed a \$2.5 billion budget and led a diversified workforce of 5,500 employees.

Clark implemented and administered Title I of the Adam Walsh Child Safety and Protection Act, which directed the USMS to locate and apprehend fugitive sex offenders. He also oversaw the implementation and operation of the National Sex Offender Targeting Center. He forged strong relationships with law enforcement leaders at the federal, state and local levels and served on many boards, including NCMEC's.

Among the many awards Clark has received is the "Lifetime Achievement Award" from the Federal Bar Association in recognition of superior service in protecting members of the judicial branch. The Federal Law Enforcement Officers Association honored him as "Federal Law Enforcement Director of the Year" for his superior leadership of the USMS.

Before joining the USMS, Clark worked for the U.S. Capitol Police and the U.S. Border Patrol. He earned a bachelor's of science degree from Syracuse University

**Sharon W. Cooper, MD FAAP
Developmental and Forensic Pediatrician, Womack Army Medical Center, Fort Bragg,
North Carolina**

Sharon Cooper is a developmental and forensic pediatrician who evaluates and treats children who have been victims of all forms of abuse, though her primary area of expertise is that of sexual exploitation. Dr. Cooper holds faculty positions at the University of North Carolina Chapel Hill, Department of Pediatrics and the Uniformed Services University of Health Sciences in Bethesda, Maryland.

She is a consultant and Board member of the National Center for Missing and Exploited Children. She is also a member of the Expert Working Group on Children who Experience Violence in Cyberspace, of the Baltic Seas. She has lectured nationally and internationally, and has provided Congressional testimony in the United States, Russia, Manitoba Canada, and Italy on child sexual exploitation. She has spoken at the European Commission on a safer Internet and is the lead author of one of the most comprehensive text on child sexual exploitation. Dr. Cooper provides training to numerous national and international investigative agencies in the area of Internet and Communication Technology crimes against children.

Dr. Cooper recently served as a Task Force member on the Defending Childhood-Children Exposed to Violence report, having been appointed by Attorney General Eric Holder. She actively evaluates victims of child abuse images and the commercial sexual exploitation and has been qualified as an expert witness in more than 300 court proceedings. She regularly provides training for multidisciplinary teams who work on child maltreatment cases and provides particular attention to all forms of sexual exploitation. She continues to provide medical care for children with disabilities and serves in several organizations which work towards the prevention of child maltreatment.

Leon Fresco
Partner, Holland and Knight

Leon Fresco is an immigration attorney in Holland & Knight's Washington, D.C., office where he focuses his practice on providing global immigration representation to businesses and individuals. He also represents clients in administrative law and government relations matters and has extensive appellate, commercial litigation and legislation experience. Mr. Fresco was the primary drafter of S.744, the U.S. Senate's comprehensive immigration reform bill of 2013. He uses his broad range of experience to develop creative solutions to achieve his clients' objectives, which often may involve multistage representation before administrative agencies, federal courts and Congress. Prior to joining Holland & Knight, Mr. Fresco was the Deputy Assistant Attorney General for the Office of Immigration Litigation at the U.S. Department of Justice (DOJ) Civil Division. In this position, Mr. Fresco provided litigation risk assessments to cabinet members in Executive Branch agencies. He also oversaw all civil immigration litigation on behalf of the federal government, including representation of the DOJ, the U.S. Department of Homeland Security (DHS), U.S. Department of Health and Human Services (HHS), U.S. Department of Labor (DOL) and the U.S. Department of State (DOS). This involved supervision of more than 350 attorneys working on nearly 10,000 cases per year. He also advised and assisted client agencies in drafting immigration regulations. In this capacity, and prior to entering government service, Mr. Fresco argued extensively in six of the federal appellate circuit courts, including several en banc arguments. Prior to joining the DOJ, Mr. Fresco was the staff director for the Senate Judiciary Subcommittee on Immigration, handling matters involving immigration, refugees and border security, including managing the subcommittee's oversight functions involving the DOJ, DHS, HHS, DOL and DOS. He was the principal advisor to Sen. Chuck Schumer (D-N.Y.), former chairman of the subcommittee, on all aspects of immigration law and policy. During his time on the subcommittee, Mr. Fresco drafted several pieces of legislation, including the 1) Border Security, Economic Opportunity and Immigration Modernization Act, 2) the James Zadroga 9/11 Health and Compensation Reauthorization Act, 3) the Emergency Border Security Supplemental Appropriations Act and 4) the Israel E-2 Visa Bill. Mr. Fresco was an associate and a Chesterfield Smith Fellow in Holland & Knight's Miami office prior to his work in Washington, D.C. He also served as a law clerk to the Honorable Daniel T.K. Hurley of the U.S. District Court for the Southern District of Florida. In October 2018, Mr. Fresco was appointed to the Customs and Border Protection Families and Children Care Panel Subcommittee of the U.S. Department of Homeland Security Advisory Council, where he is serving as a subject matter expert.

Jim Jones
Chairman, Monarch Global Strategies
Initially Appointed by Secretary Janet Napolitano – May 2012

Jim Jones is the Chairman and CEO of Monarch Global Strategies. Jones provides business development advice and consulting for clients primarily in Mexico and Latin America. He previously served as U.S. Ambassador to Mexico from 1993 to 1997. He also served as President at Warnaco International, and Chairman and CEO of the American Stock Exchange in New York from 1989 to 1993. As a member of the U.S. House of Representatives from Oklahoma from 1973 to 1987, Ambassador Jones was Chairman of the House Budget Committee and ranking member of the House Ways and Means Committee. Ambassador Jones was only 28 years old when President

Lyndon Johnson selected him as Appointments Secretary, the White House position presently titled Chief of Staff.

Wendy Smith-Reeve

Deputy Director, Arizona Department of Emergency and Military Affairs, Director, Division of Emergency Management

Initially Appointed by Secretary Kirstjen Nielsen – September 2018

Wendy Smith-Reeve began her tenure as Director of the Arizona Division of Emergency Management in May 2013, assuming the duties of Deputy Director of the Arizona Department of Emergency and Military Affairs (DEMA) in November 2013.

As Director of Emergency Management, Ms. Smith-Reeve manages the state's emergency preparedness, response, recovery, and mitigation efforts. She joined DEMA's Division of Emergency Management in September 1996 as a finance specialist for the Public Assistance Program within the Recovery Section. She was progressively promoted through the section and became Assistant Director for the Recovery Section in 2009. During her tenure at DEMA, Ms. Smith-Reeve has supported and managed state response and recovery efforts for 100 state disaster declarations and 12 presidential disaster declarations.

In April 2015, the Emergency Management Accreditation Program reaccredited Arizona in affirmation that the state's emergency management program meets industry-recognized national standards.

Ms. Smith-Reeve is a current member and former president of the Arizona Emergency Services Association. She is also a member of the National Emergency Management Association (NEMA) and formerly served as NEMA President. She also supports and serves on multiple committees, councils, and coordinating groups.

APPENDIX C – TASK STATEMENT

Secretary
U.S. Department of Homeland Security
Washington, DC 20528



October 4, 2018

MEMORANDUM FOR: Judge William Webster
Chair
Homeland Security Advisory Council

FROM: Kirstjen Nielsen
Secretary A handwritten signature of Kirstjen Nielsen, which appears to be "Kirstjen Nielsen".

SUBJECT: Four New Homeland Security Advisory Council (HSAC)
Taskings

Pursuant to the September 18, 2018 meeting of the Homeland Security Advisory Council, I am requesting you to establish four new HSAC entities to undertake reviews of critical homeland security issues. These entities should include: (1) State, Local, Tribal, and Territorial (SLTT) Cyber Security Subcommittee; (2) Countering Foreign Influence (CFI) Subcommittee; (3) Emerging Technologies (ET) Subcommittee; and (4) CBP Families and Children Care (FCC) Panel. An explanation and proposed scope for each entity is listed below in items A through D.

Recommendations are due to the full Council no later than 180 days from the date of each entity's formation. I would like an update and provisional findings from each subcommittee or panel at our next public meeting, which we will hold in late January 2019.

Thank you for your work on these important matters, your service on the HSAC, and your dedication to securing our homeland.

D. CBP Families and Children Custody Panel:

The CBP Families and Children Custody Panel is to provide findings and recommendations on the best practices from Federal, State, and local organizations regarding care for families and children in CBP custody. The Panel's mandate will include, but is not necessarily limited to, the following:

1. Conduct visits to observe CBP operations and review non-privileged information to understand CBP's unique operating environment and infrastructure, as well as the legal and funding requirements as they relate to individuals held in CBP custody. Such visits shall be conducted in a way that protects the privacy interests of those in CBP custody and privileged information.
2. Study relevant aspects of care for individuals in short-term custody, particularly children, including through interviews with academic experts and non-governmental organizations, literature reviews and studies, site visits, and assessments of best practices that might be applied to such environments.
3. Identify best practices from Federal, State, and local law enforcement regarding interactions with the family and children populations, including during arrests, processing, and short-term detention. This should include identifying how these best practices are implemented.
4. Provide recommendations regarding any potential additions or changes to CBP policies, procedures, or training related to custody of the family and children populations, including any metrics that would permit CBP to measure successful implementation of the additions or changes.

APPENDIX D - SUBJECT MATTER EXPERTS AND OTHER WITNESSES

Subject Matter Experts and Other Witnesses

1. **Santa Acuna**, Catholic Diocese, McAllen, TX
2. **Sidney Aki**, Port Director, San Ysidro Port of Entry, OFO, CBP
3. **Chancey Arnold**, (A) Assistant Chief, San Diego Sector, USBP, CBP
4. **Nathalie Asher**, Executive Associate Director, ERO, ICE
5. **Kay Bellor**, Vice President for Programs, Lutheran Immigration and Refugee Service
6. **Carl S. Campbell**, Deputy Executive Director, Operations, OFO, CBP
7. **Dr. Duane Caneva**, Chief Medical Officer, DHS
8. **Michael Cariker**, Special Operations Supervisor, San Diego Sector, USBP, CBP
9. **Victor Cavazos**, Team Brownsville, McAllen, TX
10. **Frank Carrillo**, Patrol Agent In Charge, Chula Vista Station, USBP, CBP
11. **Marco Cervantes**, Patrol Agent In Charge, Santa Teresa Station, USBP, CBP
12. **Samuel Cleaves**, Assistant Port Director, El Paso Port of Entry, OFO, CBP
13. **Eric Crouston**, Branch Chief, San Ysidro Port of Entry, OFO, CBP
14. **Desi DeLeon**, Patrol Agent In Charge, Yuma Station, USBP, CBP
15. **Jeff Demont**, Chief of Staff, San Ysidro Port of Entry
16. **Dr. Alexander Eastman**, Senior Medical Officer, DHS
17. **Alysa Erichs**, Deputy Executive Assistant Director, HSI
18. **Ashley Feasley**, Director of Policy, U.S. Conference of Catholic Bishops
19. **Rhonda Fleischer**, Program Specialist, Migration Program Division, UN International Children's Emergency Fund (UNICEF)
20. **Gerardo Galvan**, (A) Patrol Agent In Charge, Lordsburg Station, USBP, CBP
21. **Ruben Garcia**, Director, Annunciation House, El Paso, TX
22. **Ricardo Garza**, Texas Civil Rights Project, McAllen, TX
23. **George Gomez**, Strategic Communications Branch, El Paso Sector, USBP, CBP
24. **David Gonzalez**, Port Director, Hidalgo Port of Entry, OFO, CBP
25. **Luis Gonzalez**, Esq. Immigration Staff Attorney, HIAS Border Fellow Jewish Family Service of San Diego
26. **Beverly Good**, Port Director, El Paso Port of Entry, OFO, CBP
27. **Salvador Guerrero**, Deputy Patrol Agent In Charge, Santa Teresa Station, USBP, CBP
28. **Joyce Hamilton**, Angry Tias and Abuelas, McAllen, TX
29. **Tamar Magarik Haro**, Senior Director, Federal and State Advocacy, American Academy of Pediatrics
30. **Matthew Harris**, Patrol Agent In Charge, Clint Station, USBP, CBP
31. **Brian Hastings**, Chief Patrol Agent, Law Enforcement Operations Directorate, USBP, CBP
32. **David Higgerson**, Director Field Operations, Laredo, OFO, CBP
33. **Jennifer Higgins**, Associate Director, USCIS

34. **Todd A. Hoffman**, Executive Director, Admissibility and Passenger Processing, OFO, CBP
35. **Christina Patino Houle**, Equal Voice Network, McAllen, TX
36. **Randy J. Howe**, Executive Director, Operations, OFO, CBP
37. **Aaron Hull**, Chief, El Paso Sector, USBP, CBP
38. **Lindsay Jenkins**, Protection Officer, UNHCR Regional Office for the USA and the Caribbean, UN High Commissioner for Human Rights
39. **Tae Johnson**, Assistant Director, ERO, ICE
40. **Larry Jones**, Deputy Patrol Agent In Charge, Clint Station, USBP, CBP
41. **Peter Jaquez**, Patrol Agent In Charge, El Paso Station, USBP, CBP
42. **Shawn Jordan**, Special Operations Supervisor, Yuma Headquarters, USBP, CBP
43. **Brian Kastoll**, CPC Commander, El Centro Station, USBP, CBP
44. **Carl Landrum**, Deputy Chief Patrol Agent, Yuma Sector Headquarters, USBP, CBP
45. **Michael Lata**, Patrol Agent In Charge, Laredo Station, USBP, CBP
46. **Susan Law**, Angry Tias and Abuelas, McAllen, TX
47. **Veronica Lazano**, (A) Executive Officer, El Centro Station, USBP, CBP
48. **Ronald LeBlanc**, Patrol Agent In Charge, Deming Station, USBP, CBP
49. **Scott Lloyd**, Director, ORR, HHS
50. **Hector Maesa**, Deputy Patrol Agent In Charge, Lordsburg Station, USBP, CBP
51. **Hector Mancha**, Director Field Operations, El Paso, OFO, CBP
52. **Anne Maricich**, Deputy Director Field Operations, San Diego, OFO, CBP
53. **Mariza Marin**, Watch Commander, San Ysidro Port of Entry, OFO, CBP
54. **Ruben Martin**, Watch Commander, San Diego Headquarters, USBP, CBP
55. **Kevin K. McAleenan**, Commissioner, CBP
56. **Kirsty Macdonald**, Protection Coordinator, Regional Delegation for the United States and Canada, International Committee of the Red Cross (ICRC)
57. **James McHenry**, Director, EOIR, DOJ
58. **Luis Mejia**, Director, Enforcement Programs Division, Admissibility and Passenger Processing, OFO, CBP
59. **Paul Minton**, Program Manager, Admissibility and Passenger Processing, OFO, CBP
60. **Henry Moak**, Juvenile Coordinator, CBP
61. **John Morris**, Division Chief, RGV CPC, USBP, CBP
62. **Kerry Neal**, Senior Child Protection Advisor, UN International Children's Emergency Fund (UNICEF)
63. **Greg Nevano**, Assistant Director Programs, HSI
64. **Cain Nunez**, Deputy Commander, CPC El Centro Station, USBP, CBP
65. **Jamie Ortiz**, Texas Rio Grande Legal Aid, McAllen, TX
66. **Raul Ortiz**, Deputy Chief Patrol Agent, RGV Sector, USBP, CBP
67. **Todd Owen**, Executive Assistant Commissioner, OFO, CBP
68. **Olivia Peña**, Young Center, McAllen, TX
69. **Sister Norma Pimentel**, Catholic Charities, McAllen, TX

70. **Anthony Porvaznik**, Chief Patrol Agent, Yuma Sector Headquarters, USBP, CBP
71. **Ray Provencio**, Assistant Director Field Operations, El Paso, OFO, CBP
72. **Carla Provost**, Chief, USBP, CBP
73. **Carmen Qualia**, Assistant Chief Patrol Agent, RGV CPC, USBP, CBP
74. **Cameron Quinn**, Director, Office of Civil Rights and Civil Liberties
75. **Narcizo Ramos**, Special Operations Supervisor, Laredo North Station, USBP, CBP
76. **Dr. Irwin Redlener**, Director, National Center For Disaster Preparedness, Columbia University
77. **Patricia Renteria**, Program Director, Casa Presidente, Southwest Key, Brownsville, TX
78. **Jolene Reynaga**, Watch Commander, San Luis Port of Entry, OFO, CBP
79. **Carlos Rodriguez**, Director, Southern Operations Command, Hidalgo Port of Entry, OFO, CBP
80. **Silvia Rodriguez**, Civil Rights and Civil Liberties
81. **Matthew Roggow**, Associate Chief, Law Enforcement Operations Directorate, USBP, CBP
82. **Joe Romero**, Supervisory Border Patrol Agent, Sector Communications, USBP, CBP
83. **Victor Roosen**, Regional Disaster Officer, American Red Cross, San Diego Region
84. **Andrea Rudnick**, Team Brownsville, McAllen, TX
85. **Adam Ruiz**, Patrol Agent In Charge, Hebbronville Station, USBP, CBP
86. **Raul Ruiz M.D.**, Congressman, California
87. **Rosa San Luis**, Fuerza del Valle, McAllen, TX
88. **Danielle Salgado**, Young Center, McAllen, TX
89. **Eduardo Sanchez**, Assistant Chief, Headquarters, USBP, CBP
90. **Ofelia De Los Santos**, Catholic Diocese, McAllen, TX
91. **John Schwamm**, Area Port Director, San Luis Port of Entry, OFO, CBP
92. **Charles Seagroves**, Deputy Patrol Agent In Charge, Deming Station, USBP, CBP
93. **Staca Shehan**, Executive Director, Case Analysis Division, National Center for Missing and Exploited Children
94. **Cory Shindel**, Deputy Director of Policy, Kinds in Need of Defense
95. **Bradd Skinner**, Assistant Director Field Operations, Laredo, OFO, CBP
96. **Bernardino Soto**, (A) Deputy Patrol Agent In Charge, San Clemente Station, USBP, CBP
97. **Dr. David Tarantino**, Chief Medical Officer, CBP
98. **Clayton Thomas**, Deputy Patrol Agent In Charge, El Paso Station, USBP, CBP
99. **Katie Tobin**, External Relations – U.S. and Western Hemisphere, UN High Commissioner for Human Rights Regional Office for the USA and the Caribbean
100. **Brandy Urbine**, Program Analyst, CBP
101. **Karla Vargas**, Texas Civil Rights Project, McAllen, TX
102. **Lupita Vargas**, Catholic Diocese, McAllen, TX
103. **Roy Villareal**, Deputy Chief Patrol Agent, San Diego Sector, USBP, CBP
104. **Jay Visconti**, Senior Advisor, Commissioner's Office, CBP
105. **Marianela Watson**, Good Neighbor, McAllen, TX

106. **Pat Whipple**, Deputy Patrol Agent In Charge, El Centro Station, USBP, CBP
107. **Jack White**, Good Neighbor, McAllen, TX
108. **Ross Wilken**, Assistant Chief Patrol Agent, San Diego Sector, USBP, CBP
109. **Hector Zuniga**, Regional Executive Director, Southwest Key, Brownsville, TX

APPENDIX E – MEETINGS AND SITE VISITS

In Person Meetings:

- FCCP Subcommittee Members held an in person meeting in Washington, DC, which included participants from CBP, ICE, Civil Rights and Civil Liberties, and HHS.
- FCCP Subcommittee Members held a meeting in Washington, DC, which included participants from CBP; USCIS; DOJ, EOIR; ICE ERO and HSI; National Center for Missing and Exploited Children; and Non-Governmental Organizations (NGO) to include Lutheran Immigration and Refugee Service; U.S. Conference of Catholic Bishops; American Academy of Pediatrics; and Kids in Need of Defense.

Site Visits to CBP Facilities, Other Government Agencies and Non-Government Organizations:

- Members conducted their first site visit to CBP facilities:
 - OFO: San Ysidro and San Luis Port of Entry.
 - USBP: Chula Vista, El Centro, and Yuma Stations.
 - Meetings also held with local NGOs:
American Red Cross, CRCL, and Hebrew Immigrant Aid Society (HIAS) Border Fellow Jewish Family Services.
- Members conducted a second site visit to CBP facilities:
 - OFO: Hidalgo International Bridge Port of Entry.
 - USBP: Laredo, Hebbronville, RGV Ursula Central Processing Center Stations.
 - Meetings also held with:
 - 10 different local NGOs.
 - Health and Human Service Office of Refugee Resettlement Facility – Casa Presidente, Southwest Key.
- Members conducted a third visit to the El Paso region:
 - OFO: Paso Del Norte Port of Entry.
 - USBP: Clint, Paso Del Norte, Santa Teresa, and Deming Stations.
 - Meeting also held with The Annunciation House, El Paso.

FCCP Meetings:

- Participated in a briefing provided by the CBP Commissioner and USBP Chief regarding the recent death of a child apprehended by CBP.
- Held a meeting with the DHS/CBP Medical Operations Team who provided a briefing on the medical screening process for children in CBP custody.
- Held meeting with Congressman Ruiz, M.D., from California, who provided a briefing regarding legislation he is introducing on medical care and custody.
- Held a conference call with the following global protection organizations:
 - International Committee of the Red Cross (ICRC).
 - UN International Children's Emergency Fund (UNICEF).
 - UN High Commissioner for Human Rights (UNHCR).
- Held a conference call with Dr. Irwin Redlener, Director, National Center for Disaster Preparedness, Columbia University.

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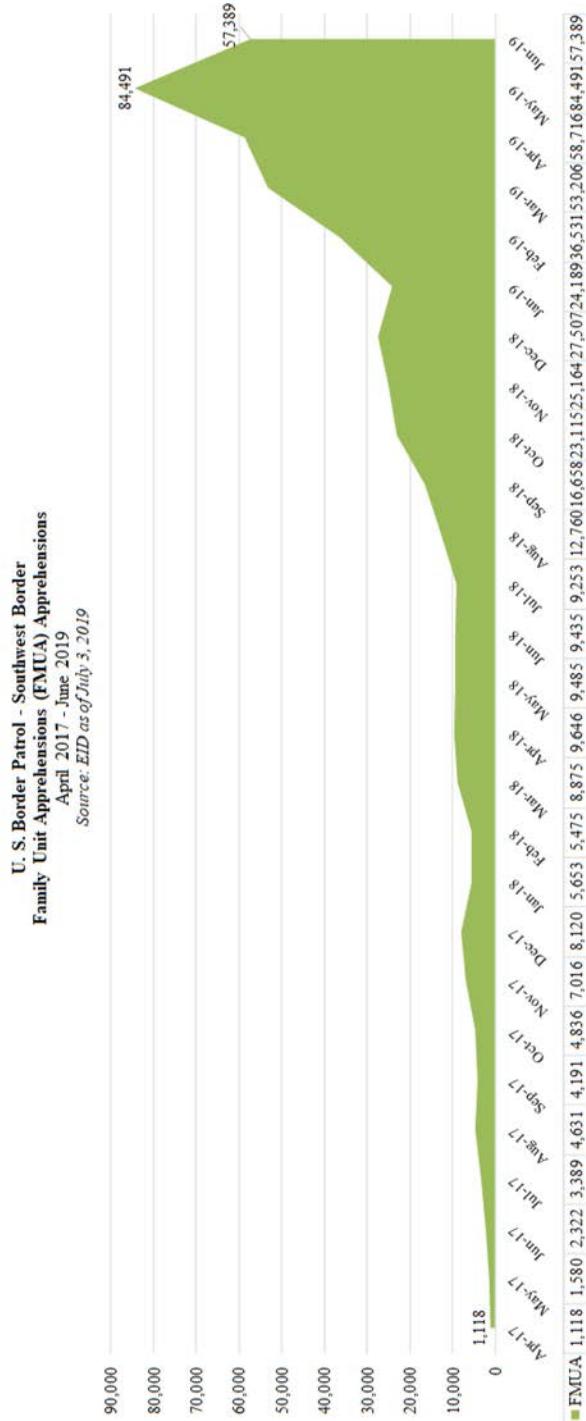
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APPENDIX G – GLOSSARY OF ACRONYMS

BIA – Board of Immigration Appeals
BLM – Bureau of Land Management
CBP – U.S. Customs and Border Protection
CIS – Citizenship and Immigration Services
CPC – Central Processing Center
CRCL – Civil Rights and Civil Liberties
DHS – Department of Homeland Security
DOD – Department of Defense
DOJ – Department of Justice
EOIR – Executive Office for Immigration Review
ERO – Enforcement and Removal Office
ESF – Emergency Support Function
FCCP – Families and Children Care Panel
FEMA – Federal Emergency Management Agency
FMUA – Family Units Apprehensions
FOB – Forward Operating Base
GSA – General Services Administration
HHS – Health and Human Services
HSAC – Homeland Security Advisory Council
ICE – Immigration and Customs Enforcement
ICRC – International Committee of the Red Cross
INA – Immigration and Nationality Acts
MPP – Migrant Protection Protocols
NAFPI – North American Family Protection Initiative
NGO – Non-Governmental Organization
NRF – National Response Framework
NT – Northern Triangle
NTA – Notice to Appear
OFO – Office of Field Operations
OMB – Office of Management and Budget
ORR – Office of Refugee Resettlement
PAIC – Patrol Agent in Charge
POE – Port of Entry
RPC – Regional Processing Center
SBO – Southwest Border Operations
SWB – Southwest Border
TDY – Temporary Duty
TVPRA – Trafficking Victims Protection Reauthorization Act
UAC – Unaccompanied Children
UNHCR – UN High Commissioner for Human Rights
UNICEF – UN International Children’s Emergency Fund
USBP – U.S. Border Patrol
USG – United States Government



UNPRECEDENTED MIGRATION AT THE U.S. SOUTHERN BORDER: WHAT IS REQUIRED TO IMPROVE CONDITIONS?

TUESDAY, JULY 30, 2019

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Portman, Lankford, Romney, Scott, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. This hearing will come to order.

I want to welcome our witnesses. The title of this hearing, "The Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?" I think it is incredibly important that we concentrate on what we can do to improve conditions. Continuous improvement. I have a manufacturing background. That is what we seek to do.

I will say at the outset that nobody is satisfied with the conditions on the border. Nobody is. This is unprecedented what is happening on the border. It is overwhelming. It is out of control.

I was talking to the Acting Commissioner before the hearing here and mentioned how former Department of Homeland Security (DHS) Secretary Jeh Johnson was on MSNBC a couple months ago, and he talked about how, when he came to the office, if apprehensions for the day were under 1,000, it was not too bad a day. If they were over 1,000, he knew he was going to have a really bad day.

The fact of the matter is in May the average daily number of apprehensions and people presenting themselves at the port of entry (POE) without proper documentation claiming asylum was 4,652—4.6 times 1,000 a day. In June that number dropped to 3,476. For a number of reasons, I think the Acting Commissioner will be getting into that. Currently we are probably less than 3,000 a day, but we are still close to 3,000 a day.

Everybody has seen my chart.¹ We continue to update it. That chart only shows unaccompanied alien children (UAC) and people coming in as a family unit. You can see how it has exploded here in fiscal year (FY) 2019. As of June, the first 9 months of this fiscal year, 495,000 children and family units have come to this country. If June's pace continues, we will be over 700,000, again, primarily people coming in as family units, generally one adult, one child. In total, through June we have had 780,000 people cross the border legally or present themselves to a port of entry without proper documentation claiming asylum. Again, if June's pace continues, we will be about 1.1 million.

So those are the numbers that we are having to deal with. That is what Border Patrol is having to deal with on a daily basis. I ask my colleagues, I ask anybody criticizing the conditions down there: How would you handle 4,652 people a day, then wake up the next day and handle another 4,652 people? By the way, it does not stop at 5 o'clock at night. It continues 24/7. It is overwhelming.

I had an earlier interview with a reporter from the Washington Post, a real good interview, very interested in kind of the full complexity of this problem, the reporter asked me my evaluation of Acting Secretary Kevin McAleenan. My point was if you are looking to see criticism from me, you will not get any. I will not criticize any former Secretary, Acting Secretary, or current Secretary of Homeland Security. It is an overwhelming task. We are not only talking about the border. We are talking about natural disasters and the Federal Emergency Management Agency (FEMA), so many responsibilities of that position. First of all, I am just grateful anybody would take the position.

Commissioner, I am grateful you stepped up to the plate in your capacity. I am particularly grateful to the men and women of DHS, of the U.S. Border Patrol (USBP) that have kind of rallied to try and deal with this overwhelming situation.

There may be some instances, there may be a few bad apples, but the men and women that I talk to, that I see, dealing with this humanitarian crisis on the border are doing everything they can to treat these individuals with care and compassion. But they are overwhelmed by the situation.

I just want everybody to keep in mind what the reality of the situation is. Ask yourself, how would you handle it? How would you manage this? What I would suggest is the solution which we have been suggesting all along is in this case, with this problem in the here and now, is let us address the root cause, this uncontrolled flow of individuals. I would argue that the goal of our policy, the first goal—and we have so many different problems associated with this illegal flow. But the first goal of our policy should be to reduce that flow, which is what the letter we sent to DHS, working with them to design a pilot program called "Operation Safe Return," whose goal would be to rapidly and more accurately determine those individuals that clearly do not have a legal claim to stay in this country and safely return them to their home country to the safe regions of Central America. There are safe regions in Central America. That is important to point out.

¹The chart referenced by Senator Johnson appears in the Appendix on page 485.

So, again, the focus on this Committee hearing is what can we do with this overwhelming situation to improve the conditions. We all want to do that. I am not particularly interested in placing blame. I am interested in what can we do to address this overwhelming and out-of-control situation.

I would ask that my written statement be entered into the record.¹

With that, I will turn it over to Senator Peters.

OPENING STATEMENT OF SENATOR PETERS²

Senator PETERS. Thank you, Mr. Chairman.

At the end of May, Chairman Johnson, Senator Hassan, and I were together visiting the U.S.-Mexican border, and on that trip we saw firsthand the tremendous challenges that the Department of Homeland Security personnel and local communities are facing at the Southern Border. It is clear that our infrastructure and our personnel are overwhelmed. Resources are stretched thin and are being shifted away from other priorities like the Northern Border. Our capacity to address the humanitarian needs of children and families is overburdened.

Despite those difficulties, we witnessed hardworking law enforcement officers, public servants, volunteers, and civic leaders all doing their very best to manage a very difficult situation. At the same time, it is impossible to ignore the reports and the images that have emerged regarding substandard conditions and unacceptable treatment and tragic deaths of children at some Customs and Border Protection (CBP) locations. I am also alarmed at the reports that we have seen regarding unprofessional and unacceptable conduct from a small number of Border Patrol agents.

The situation at our Southern Border is, of course, incredibly challenging. It is clear that our current system is not equipped to process and care for the unprecedented number of families and children seeking asylum at the Southern Border. Some of the images that we have seen and the stories we have heard I believe do not reflect the overall efforts of the Customs and Border Protection folks, the hardworking men and women who secure our borders. They certainly do not reflect the values of this great Nation.

But it is clear that there are significant challenges on the ground and to some extent problems within the agency's culture that must be swiftly and adequately addressed. In recent weeks we have seen a decline in the number of migrants arriving along the Southern Border. The pressure appears to be decreasing, at least temporarily. This drop has helped ease overcrowding at many border facilities.

Billions of dollars in supplemental funding has enabled DHS to improve their response to these challenges, and today I hope this Committee will hear specifics on how those additional taxpayer dollars are being used. However, as Members of this Committee know, much of the migration that occurs from Mexico and the Northern Triangle countries is seasonal. This fall we can expect to see the number of arrivals rise again.

¹The prepared statement of Senator Johnson appears in the Appendix on page 465.

²The prepared statement of Senator Peters appears in the Appendix on page 467.

We now have an opportunity to examine where we have failed and where we have succeeded and put lessons into practice. We need innovative ideas to improve migrant processing to relieve the strain on our front-line border security professionals and other agencies that have provided support services in recent months and to keep our border secure and our country safe.

Few issues we face are as complex as this one, but today I hope we can find common ground, identify bipartisan solutions, and deliver real comprehensive results for the American people.

I would like to thank our witnesses for being here today, and I look forward to your testimony and responding to our questions.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Peters.

It is the tradition of this Committee to swear in witnesses, so if you will both stand and raise your right hand. Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. MORGAN. I do.

Ms. COSTELLO. I do.

Chairman JOHNSON. Our first witness is Acting Commissioner Mark Morgan. Commissioner Morgan began serving his country as a U.S. Marine and his community in local law enforcement. After completing a 20-year career in the Federal Bureau of Investigation (FBI), he began service at the Department of Homeland Security as the Acting Assistant Commissioner for Internal Affairs before being appointed by President Obama as Chief of the U.S. Border Patrol. He served as Chief until January 2017. He returned to DHS as the Acting Director of Immigration and Customs Enforcement (ICE) in May of this year and began his current role as Acting Commissioner of U.S. Customs and Border Protection on July 7th. Commissioner Morgan.

TESTIMONY OF MARK MORGAN,¹ ACTING COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. MORGAN. Chairman Johnson, Ranking Member Peters, and Members of the Committee, thank you for this opportunity to appear before you today.

I would like to begin with a story. On May 30th Border Patrol agents from the Del Rio Sector saw a group of undocumented migrants crossing the Rio Grande Valley (RGV) in Texas. The agents watched as smugglers carried a paraplegic man to the river and then callously threw him in. The paraplegic man, of course, immediately began to drown. Fighting the strong river current, agents were able to reach the drowning victim and safely bring him to shore. Had agents not been there, he would have added to the 172 deaths discovered along the Southwest Border in desolate locations and rivers resulting from the dangerous trek and complete disregard for human life at the hands of smugglers.

This is one of more than 4,000 rescues performed by CBP this year, with Border Patrol leading the way. This is who the men and women of the United States Customs and Border Protection are.

¹The prepared statement of Mr. Morgan appears in the Appendix on page 469.

They risk their lives every single day to help and protect whoever is in distress. They do not ask what the person's nationality is or whether they are trying to illegally enter this country. They simply see a human being needing help, and that is exactly what they provide them.

The men and women of the CBP are not running concentration camps, making those in our custody drink from toilets, nor denying them access to toothbrushes. That is simply not true. This is the kind of irresponsible rhetoric that they have to endure from both the media and even some of our own congressional leaders. It is unjust and does nothing to bring us closer to resolving one of the most divisive issues that we face in our country.

Stories of agents saving lives from drowning in the Rio Grande, dying of dehydration in the desert, and suffering in stash houses or at the hands of smugglers, that goes unreported. The demonizing of law enforcement professionals must stop. These false, misinformed, and overheated attacks are demoralizing and serve to further deteriorate the public's understanding and perception of what the true issues are and what needs to be done to end this crisis.

We should be coming together to focus our efforts on the real enemy—the cartels and smugglers who make billions of dollars at the expense of an extremely vulnerable population while exploiting loopholes in our immigration legal framework to facilitate their operation.

Over the past year, Homeland Security leadership has repeatedly told Congress and the press that we have an emergency on our hands. We have provided some statistics about the alarming and unprecedented increase in apprehensions. That number is over 800,000 year to date. We have explained how the demographics of this mass migration are unlike previous arrivals and how families and children from Central America present significantly different challenges with regard to their care and processing. Over 450,000 of these apprehensions were family units, and over 80,000 were unaccompanied children. Combined, that is over 300,000 children have entered our custody since October 1 of last year. These numbers are staggering, unprecedented, and have overwhelmed every aspect of our border and immigration enforcement system.

Last week I met with the Ministers of Security from the Northern Triangle countries who all—all of them—expressed their collective frustration that “the future of [their] countries are leaving for America” and “they want their children back.”

We at CBP, at DHS, we are comforting infants. We are taking the sick to the hospital, averaging over 800 hospital visits per day. We are expanding our medical care, ensuring children are provided medical screenings. We are building soft-sided facilities to provide a more adequate environment for families and children, costing tens of millions of dollars per month to operate. We are providing food, clothing, and other basic necessities.

We have pulled agents from the border security mission to help process the massive volume of migrants. In some sectors, up to 50 percent of agents are pulled off the line to support the extraordinary humanitarian effort along our Southwest Border. We have pulled agents from our northern and coastal duty stations. We have

pulled more than 700 officers away from ports. We have called for volunteers from all across the government to help us manage this surge of humanity.

The recent supplemental, it helped. But as we have been saying, this is merely treating the symptoms of this crisis. It does not cure the cause.

It looks like I have about run out of time. If I could have just a few more seconds?

Chairman JOHNSON. Take the time and finish your statement.

Mr. MORGAN. Smugglers openly advertise a safe and legal journey to the United States. They tell migrants and their families that there is a policy in the United States that anyone who arrives with a child will not be deported. We have stats and facts to show that is exactly what is being communicated, and our laws support that perception.

If there are not specific and meaningful changes in our laws, our detention facilities will continue to be overwhelmed. Our personnel will continue to be diverted from their primary missions to safeguard this country. Legitimate trade and travel will continue to suffer. Our ability to prevent dangerous narcotics and criminals illegally entering our country will continue to be greatly diminished. And smugglers, like the ones who threw the paraplegic man into the Rio Grande, they will continue to profit.

Although we are seeing the numbers across all demographics decreasing at the moment, due in large part to the efforts of this current Administration, working with the Government of Mexico as well as our Northern Triangle countries to address this as a true regional crisis and concern, this is not a durable, long-term solution concerning the national security and humanitarian crisis we are facing. Congress must acknowledge this is a crisis and pass meaningful legislation to address the loopholes in our current legal framework.

Thank you for your time. I look forward to answering your questions.

Chairman JOHNSON. Thank you, Commissioner.

Our next witness is Jennifer Costello. Ms. Costello is now the Deputy Inspector General (IG) for the Department of Homeland Security. Prior to Thursday, when we actually did get confirmed Inspector General Cuffari, she was the Acting Inspector General, and we appreciate your service from that standpoint. Ms. Costello has been at the Department of Homeland Security Office of Inspector General (OIG) since 2017, and prior to her experiences at DHS, she spent over 13 years as Assistant Director in the Forensic Audits and Special Investigations Unit at the Government Accountability Office (GAO).

Again, I appreciate you spending some time in my office where we talked a little bit about how GAO can help get the metrics on Operation Safe Return. Ms. Costello, welcome.

**TESTIMONY OF JENNIFER L. COSTELLO,¹ DEPUTY INSPECTOR
GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY**

Ms. COSTELLO. Chairman Johnson, Ranking Member Peters, and Members of the Committee, thank you for inviting me here today to discuss DHS OIG's recent work on conditions at Customs and Border Protection holding facilities at the Southern Border. My testimony today will focus on our two recent Management Alerts regarding the dangerous overcrowding and prolonged detention observed by DHS OIG inspectors at the El Paso Del Norte Processing Center in May of this year and facilities in the Rio Grande Valley in June. We issued these alerts because the conditions we observed posed a serious and imminent threat to both the health and safety of DHS personnel and detainees.

DHS OIG conducts unannounced inspections of CBP facilities to evaluate compliance with CBP's Transport, Escort, Detention, and Search (TEDS) standards. TEDS standards govern CBP's interactions with detainees, providing guidance on things like duration of detention, access to medical care, access to food and water, and hygiene.

Our unannounced inspections enable us to identify instances of noncompliance with TEDS standards and to propose appropriate corrective action to the Department. In doing so, we seek to drive transparency and accountability at the Department of Homeland Security.

Although CBP has struggled at times to achieve full compliance with detention standards, our recent unannounced inspections revealed a situation far more grievous than those previously encountered by our inspectors. For instance, when our team arrived at the El Paso Del Norte Processing Center, they found that the facility, which has a maximum capacity of 125 detainees, had more than 750 detainees onsite. The following day, that number increased to 900.

Additionally, at all the Border Patrol facilities we visited in the Rio Grande Valley, we observed serious overcrowding among unaccompanied alien children. We also found that individuals, including children, were being detained well beyond the 72 hours generally permitted under TEDS standards and the *Flores Agreement*.

For instance, at the centralized processing center in McAllen, Texas, many children had been in custody longer than a week, and some UACs under the age of 7 had been in custody for more than 2 weeks.

Under these circumstances, CBP has struggled to comply with TEDS standards. For instance, although all facilities we visited in the Rio Grande Valley had infant formula, diapers, baby wipes, and juice and snacks for children, two facilities had not provided children access to hot meals as required until the week we arrived. Additionally, children at three of the five facilities we visited had no access to showers, limited access to a change of clothes, and no access to laundry facilities.

Space limitations also affect single adults. The lack of space has restricted CBP's ability to separate detainees with infectious diseases such as chicken pox, scabies, and influenza, from each other

¹The prepared statement of Ms. Costello appears in the Appendix on page 475.

and from the general population. According to CBP management, these conditions also affect the health of Border Patrol agents who are experiencing high incidence of illness. Further, there is a concern that the overcrowding and prolonged detention may be contributing to rising tensions among detainees. A senior manager at one facility in the Rio Grande Valley called the situation “a ticking time bomb.”

Despite these immense challenges, we observed CBP staff interacting with the detainees in a professional and respectful manner and attempting to comply with standards to the extent possible. Notwithstanding these efforts, Border Patrol requires immediate assistance to manage the overcrowding in its facilities. CBP is not responsible for providing long-term detention, and CBP facilities like those we visited are not designed to hold individuals for lengthy periods of time. However, with limited bed space available in ICE facilities and the Department of Health of Human Services (HHS) facilities nationwide, detainees are left in CBP custody until a placement can be found.

In its response to our recent Management Alerts, DHS described the situation on the Southern Border as an “acute and worsening crisis.” Our observations comport with that characterization, which is why we have called on the Department to take immediate action to begin to remedy the situation.

DHS OIG will continue to monitor and report on the situation at the border. In the meantime, the Department’s leadership must develop a strategic coordinated approach that will allow it to make good on its commitment to ensure the safety, security, and care of those in its custody.

Mr. Chairman, this concludes my statement. I am happy to answer any questions the Committee has.

Chairman JOHNSON. Thank you, Ms. Costello.

I want to throw a couple numbers out on some of these issues that have been raised. We talked a little bit about the capacity of the border stations. First of all, generally, except for the McAllen, Texas, facilities and some of the temporary facilities, these Border Patrol stations are basically police stations, correct? They are not designed whatsoever to really house any volume of people.

Ms. COSTELLO. No, not at all, and that I think is the problem. What we are seeing in the overcrowding is simply not designed to house the capacity of migrants that they are getting at this time.

Chairman JOHNSON. Commissioner Morgan, I think we got information from you that the basic capacity of the hard-sided facilities is about 4,000?

Mr. MORGAN. Yes, sir, that is correct. During this time period that the reviews were being done by the OIG, which we appreciate, welcome, and enjoy their partnership, at that time we reached the highest apprehensions in the month of May, over 140,000. At that time our detention capacity of those we had in custody reached 19,000, and our capacity was 4,000.

Chairman JOHNSON. I have 19,699 on June 3rd. Even at that 4,000 capacity, is that fire code capacity or is that just how many we can generally chock in one facility?

Mr. MORGAN. That is all across the Southwest Border, including the sectors and approximately 70 stations. That is what we refer

to as—4,000 to 4,500, we refer to that as “a manageable population.”

Chairman JOHNSON. Senator Peters made the comment and asked the question about how have the dollars been spent. It was unfortunate it took 2 months for that emergency funding request to be passed, but, my information I have received, I think from you and others, is that prior to the funding, we had about 2,700 unaccompanied children in the custody of Border Patrol beyond 72 hours, up to as many as 10 days, a few outliers beyond that. But within a couple weeks we were down to a little bit more than a day’s intake, about 300, with an average stay of about 30 hours. Is that pretty accurate in terms of what the conditions were and what they are currently?

Mr. MORGAN. Yes, sir. Again, during the time of the OIG review, we were topped out at about 2,700 unaccompanied minors, and today we are averaging in the past week between 250 to 300, with less than 20 over 72 hours. Several of those are due to medical conditions.

Chairman JOHNSON. The reason you were backlogged so much is there simply was not the bed space or detention facilities open in HHS until they had the funding. Is that correct?

Mr. MORGAN. Yes, sir, that is correct. I think she represented it well, that we have interdependencies. When it comes to UACs, we are reliant on HHS Office of Refugee Resettlement (ORR) to take those children. And then for single adults and families, we rely on ICE to remove those from our custody.

Chairman JOHNSON. So Border Patrol had really no option other than to continue to hold those children until bed space opened up in HHS. You could not just let them into the communities. You were responsible for them, and you had to keep them in your custody, in obviously crowded conditions because you a capacity of 4,000, and you had more than 19,000 people in custody.

Mr. MORGAN. Yes, sir, that is correct. In both El Paso and RGV at the time, and still RGV to this day, they were two of the sector that were getting inundated the most. El Paso, and I am sure you have already heard, one day, one single large group of over 1,000, of which 90 percent of them were families and kids, hit the El Paso Sector in a single day.

Chairman JOHNSON. Ms. Costello, I appreciate the fact that you made the comment that the Border Patrol personnel that your inspectors talked to were professional, they were respectful. They were doing everything they could do to take care of these children and family members in their custody that they have been basically given the responsibility to take care of. Is that accurate?

Ms. COSTELLO. That is a fair assessment, Senator, and those are our experiences. Obviously, OIG would never discount anybody else’s experience, but our inspectors have been doing this for a while and have always encountered very professional CBP staff.

Chairman JOHNSON. It has certainly been my experience when I have encountered them at the borders. I have talked to Border Patrol personnel. They are trying to cope with the situation with as much humanity and compassion as they possibly can muster. So, again, there may be a few outliers. There may be a few instances—we saw the texts or the whatever. Those are obviously un-

acceptable and regrettable. But the vast majority of the men and women of DHS and Border Patrol are trying to cope with this.

In your testimony you were talking about Border Patrol agents becoming ill, the illnesses coming across the border. We have a pretty long list of them. I am concerned about drug-resistant strains of tuberculosis, those types of things. I am concerned about Border Patrol attrition. Is that something that you are really taking a look at in your inspections, basically the basic morale of Border Patrol personnel trying to cope with this?

Ms. COSTELLO. Morale in and of itself is not a specific focus of our work, but we are looking into the drivers behind that prolonged detention to see, as Mr. Morgan was suggesting, what is going on with ICE and HHS that is leading to some of these problems.

Chairman JOHNSON. The Commissioner talked about the larger aspect, a dimension that I do not think is reported on enough, the whole human-trafficking element. We had an Homeland Security Investigations (HSI) witness here talking about a child sold for \$84, when we were down at the border, a child, a 3-year-old boy, left in a field, his name and a phone number written on his shoe, the fact that we are finding these families in stash houses that are being beaten, the beatings being videotaped, being sent back to Central America demanding ransom, the involuntary servitude that Senator Portman had an investigation a couple of years ago on unaccompanied children showing up in involuntary servitude, a situation in an egg farm.

Are you looking at that aspect in the Inspector General's office?

Ms. COSTELLO. No, not at this time, and we would have to be careful about jurisdictional issues related to some of that. Having said that, we are very open to considering all sorts of issues on the table. But, what we actually have authority and purview over is one of the first questions we ask.

Chairman JOHNSON. Commissioner Morgan, let me throw it to you in terms of your concern over just basic attrition. I do not think anybody would want to spend the night in those facilities. I am highly concerned. Again, I went down there, and you can see the holding cells for scabies, for chicken pox, and for flu. I would be concerned about Border Patrol personnel kind of giving up and trying to take a position elsewhere, either in the Federal Government or in the private sector. Can you just kind of talk to your generally assessment—you have been on the job now for a few weeks—of the Border Patrol?

Mr. MORGAN. Yes, sir, and I harken back to my time as Chief of the Border Patrol in 2016. I think the IG's report captures it well, and the Border Patrol, CBP personnel, all those entities are helping us, they are mothers, fathers, brothers, and sisters. The overcrowding that you see, we have all said that we have to do better, that children and families should not be held in police stations for a long-term period of time. We all agree with that. So, absolutely, it affects them every single day. I worry about their health and their morale, and I think absolutely it is being impacted.

Along with the frustrations, they also know Congress could do some things if they could work together to pass meaningful legislation. That is equally as frustrating for them as well.

Right now, though, the hiring numbers for us are OK. They are not going in a downward departure. But I am concerned about the future.

Chairman JOHNSON. That is good to hear. I have run out of time. I do want to talk about the solution in terms of reducing that flow, but we will save that for later on. Senator Peters.

Senator PETERS. Mr. Chairman, my office has received a statement from Church World Services (CWS), and I would like to ask unanimous consent that it be entered into the hearing record.¹

Chairman JOHNSON. Without objection.

Senator PETERS. Thank you.

Mr. Morgan, it is clear that we are confronted with a significant problem on the Southern Border, and the challenges are wide-ranging and require, I think, significant coordination from a number of Federal agencies coming together, and that means also Federal, State, and local. Truly a whole-of-government approach is necessary to confront this.

So could you describe how CBP is coordinating with other DHS components, including U.S. Citizenship and Immigration Services (USCIS), ICE, and CBP, as well as HHS and ORR?

Mr. MORGAN. Yes, sir. So the coordination specifically with USCIS and ICE, that is really done on a daily basis. For example, we talked about the interdependencies that we have specifically with respect to ICE. One of the largest challenges we have right now are single adults. Again, ICE does not have adequate bed space, and so it is a constant struggle with the number of apprehensions we have to be able to ensure and get them out of our custody as fast as possible to ICE.

So we are coordinating with ICE on a daily basis with respect to how we can expeditiously get those single adults out of custody into ICE. USCIS, obviously we work with them on a daily basis. They are the asylum officers. They are the ones that actually determine and adjudicate someone's credible fear claim as they go through the process. They are at our stations. We work with them constantly. DHS, again, this is not just a CBP issue, this is not just an ICE issue. It really is a DHS issue. It is even outside of DHS. Right now we have hundreds of volunteers from across DHS that have been deployed to the Southwest Border to help us specifically with the humanitarian crisis.

Senator PETERS. So you talk about daily coordination, but is there an interagency group in a formalized way that is actually coordinating this on a regular basis? Or is this ad hoc as you are just talking to other agencies?

Mr. MORGAN. No, it is both. So we both have working groups at the local level in each field. So each field has their own entity that they work, whether it is El Paso, RGV, with those entities. And then at DHS there is also a working group that is led by DHS that has a lot of different subgroups and subcommittees. But we are doing it on a formal basis.

Senator PETERS. Because that is important. When we are trying to think about how we coordinate all these activities, which it is going to require, I am always frustrated as to knowing who is actu-

¹The statement referenced by Senator Peters appears in the Appendix on page 495.

ally in charge. Who is actually responsible for making sure all of these pieces are working together? I never seem to get a real good answer about that, and that has me concerned.

I guess, that leads to the question: Is anyone at the White House facilitating the coordination of these activities?

Mr. MORGAN. They are absolutely involved in every aspect of this crisis.

Senator PETERS. Who is doing that at the White House?

Mr. MORGAN. Different entities. It depends on what lane it—

Senator PETERS. Different entities are coordinating. Is there one entity that is really responsible for coordinating all this?

Mr. MORGAN. I would say it depends, sir, on what element you are talking about with respect to the certain conditions you are talking about. I mean, we could talk about media. That could be held by a different individual. If you are talking about what we can do within the current legal framework to stem the flow of migration, then we would be talking to different people within the White House.

Senator PETERS. Is there someone who is in charge of coordinating State and local governments as well as Non-governmental organizations (NGO's), which are a critical component of all this?

Mr. MORGAN. Yes, sir. DHS has a State and local partner coordinator, yes, sir.

Senator PETERS. So that person is in charge that we could ask how is that coordination going?

Mr. MORGAN. Yes, sir.

Senator PETERS. Mr. Morgan, the fiscal year 2019 appropriations bill has included \$128 million for CBP to contract with medical professionals, and a recent emergency supplemental included roughly \$112 million for medical care and consumables.

Given the number of children who are arriving at our Southern Border, how much of the fiscal year 2019 and supplemental funding has been spent on pediatric medical professionals?

Mr. MORGAN. So on specific pediatric care, I do not have those numbers in front of me. But we are looking at \$63 million for continued additional medical assets and high-risk support across the Southwest Border. That was contained in the supplemental moving forward.

Senator PETERS. But we want to know how it is being spent, how many folks are involved. Part of our oversight function here is to understand exactly how that money is being spent. It is the intent of Congress to make sure we are providing medical services to those folks who need it, and we are accountable to the taxpayers for that money and how it is spent. So I would certainly like to do a deeper dive with you to have a better sense of that.

Mr. MORGAN. Yes, sir, and I have that data. I will be able to provide that, sir.

Senator PETERS. Where these professionals are being sent, any shortfalls, challenges, all of that is going to be important for all of us to do our work.

Mr. MORGAN. We have all that data, sir.

Senator PETERS. Thank you.

Senator PETERS. While the recent Management Alert is certainly the main discussion point for us today, it is my understanding that

this alert, Ms. Costello, is part of a much larger oversight effort that is related to the CBP and ICE detention facilities. I think it is important for this Committee to hear you describe what other reviews are currently in progress. More importantly, when do you expect those reports to actually be released?

Ms. COSTELLO. Senator, we have a lot in this space. Following on the Management Alerts, I think in my written testimony you may have seen this is part of a larger series of unannounced inspections that we did all along the Southern Border. So these two alerts were issued because of the serious nature of what we found, but we will be issuing a Capping Report this fall to identify the findings in all the facilities.

We are also looking at, since you were asking Mr. Morgan about it, we are going to audit how that aid is being spent, not all of it but the consumables, the medical access, things of that nature. We are looking at asylum seekers at the Southern Border, separating families at ports of entry, whether or not families were given the opportunity to be removed with their children, things of that nature.

We are looking at the underlying causes of the prolonged detention, so why 72, why are we going beyond the 72 hours? Between HHS, ICE, CBP, and some of the other folks in play what are the factors at play in driving that?

We have a data analysis audit underway looking specifically at the tracking of children during zero tolerance. We are also looking at ICE's ability to quickly and easily remove criminal aliens. It is a lot of work in this space.

I think the first job that will be issued will be the data tracking work. We will follow shortly with most likely the Capping Report on all these inspections and perhaps some asylum seekers work this fall.

Senator PETERS. When you say "this fall," when do you expect that to be?

Ms. COSTELLO. You are going to pin me down, aren't you?

Senator PETERS. Broadly speaking.

Ms. COSTELLO. I think the reports will start coming out September and roll out toward the end of the year.

Senator PETERS. That is great. Mr. Morgan, as we talked about in my office on other occasions, transparency is critically important. I would certainly hope that we have your commitment to ensure that the OIG retains access to unannounced facility visits and anything else necessary to conduct oversight, which is absolutely critical to maintaining transparency.

Mr. MORGAN. Absolutely, sir. There is an old saying. I think great agencies remain great because they believe they can get better, and I believe that the OIG is one significant step in how we maintain that.

Senator PETERS. Great. Thank you.

Chairman JOHNSON. Thank you, Senator Peters.

Before I turn it over to Senator Portman, because you raised the issue of pediatricians, Commissioner Morgan, I have spoken with you about the fact that I met with both the representatives from the American Academy of Pediatricians (AAP) as well as nurse practitioners who are offering, I guess, individuals who want to go

down and help, and you said you would do everything to facilitate that. Do you want to just make that kind of public commitment?

Mr. MORGAN. Yes, sir, absolutely. There are some challenges with that, obviously, but anyone who wants to come and assist us with our continuing expanding medical care, it is absolutely—I would be more than welcome to work with them. We have done a lot. We are hiring four pediatric advisers and a patient safety officer at this time. Just last week I authorized for CBP to go forth with hiring our own chief medical officer. We have expanded our medical contract now to almost, I think, a little under 300 medical professionals that we are sending out across seven sectors and 20 of the stations, and we are expanding more every single day.

Chairman JOHNSON. I do not want to just have people show up at the border, so it has to be coordinated. I guess I would just suggest if you would be willing to meet with those same representatives and you can kind of hash out a coordinated technique or method for those individuals to help out.

Mr. MORGAN. Yes, sir, and we have two physicians right now, one at DHS that is coordinating the overall Southwest Border medical initiatives. We have one that is detailed specifically to CBP. I think it would be a great idea to include the pediatricians into the fold with these physicians and have some meaningful dialogue on how we can get better.

Chairman JOHNSON. We will try and facilitate that. Senator Portman.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Mr. Chairman, and thank you both for being here today.

This is a tough issue, and what we have been trying to do in this Committee is to look at it from an objective point of view and try to get some bipartisan solutions, particularly on the root causes. It has been hard. Obviously, we do not have consensus yet, and that is frustrating because I was down there on July 12th, as I think you know, Commissioner, and had the opportunity to go to the McAllen Sector and see what was going on, went to the Donna processing facility and also the Customs and Border Protection processing facility there, the station. It is a bad situation. There is obviously a huge influx of individuals, but what is really tough is the influx of families and kids, and that is unprecedented. There has been no previous time in our Nation's history we have had this many people coming across the border who are in family units and have to be taken care of differently.

One of the things that was interesting at the Donna processing facility—and I think this is something that some of my constituents have found surprising—the families I talked to—and I spoke to five or six families. My Spanish is good enough to get by, and I asked them, why are they here and how long they plan to be here. I also talked to the Border Patrol about that, of course, Customs and Border Protection. The honest answer is they expected to be released into the United States, and the Customs and Border Protection people expected to release them within a few days—in fact, for some of them, within a couple days, I was told. And so that is the understanding on both sides, and the reason is that they cannot be

processed during the time period that we have, particularly if they have, again, a minor child with them.

It is pretty common sense. Unless we fix those laws, change those laws, we are not going to be able to keep people in any kind of detention facility or processing facility long enough to be able to assess whether it is appropriate for them to come into the United States legally. We are simply releasing them into the community and the nonprofits are helping to ensure people have what they need when they leave the processing facility and get them on the buses and get them on the airplanes and take them to communities around the country. These people have been processed, and they have been told to show up at a court hearing, and some of them do and some of them do not. Typically, it takes a couple years, actually between 2 and 3 years, for the first hearing, and then typically 5 or 6 years, we were told, before the case is finally resolved. You can imagine during that time period a lot of folks tend to stay in the United States and not show up at those hearings.

Those numbers are hard to get in terms of how many show up. I do not know if you have anything on that today, either one of you. The numbers I have heard, fewer than half actually show up for the final hearing to be able to determine their status. Is that still accurate?

Mr. MORGAN. That is accurate, sir. That is the information that I have.

Senator PORTMAN. Ms. Costello.

Ms. COSTELLO. We do not have any information on that. That would be a Justice statistic.

Senator PORTMAN. So today we are focused on the conditions at the border, but I guess my point is this will continue, and we are not going to be able to resolve it unless we come up with some common-sense solutions to a very obvious problem, which is traffickers going to poor families in Central America and saying, "If you come, if you are willing to pay us 5,000 to 10,000 bucks and come with us, we can get you into the country. In fact, we do not even have to do anything else other than leave you at the border, and you walk across a bridge," or in the case of some of the families I met, across the river, "and present yourself and you can go into America." When you can make 10 to 20 times more here in America than you can in your home country, it makes sense. You and I would do the same thing, probably, if we were given the opportunity to help our families. But we have a legal immigration system, and there are people waiting not just for months but for years in those same countries to come legally.

I do not think the problem is really that hard to understand. The asylum issue on top of it, obviously, adds some complexity.

In terms of the overcrowding and what I saw was overcrowding in the men's facility at the Customs and Border Protection processing facility. The analogy that the Customs and Border Protection people were telling me, which I think makes sense, is this is more like the police station where you process people, but it is not a detention facility. The detention facilities ICE runs. Congress in the \$4.6 billion that we sent down to the border—which I think was absolutely necessary, and I am glad it is there, and it is being used to help with the humanitarian crisis on the border. But Con-

gress said, no, we are not going to fund these ICE beds. I saw the report from the Inspector General, the OIG finding from your trip to the border, I imagine, Ms. Costello, and your colleagues, it says, "Due to shortage of ICE beds, Border Patrol has had to hold detainees longer than 72 hours." That was one of your findings.

Ms. COSTELLO. Yes, that is accurate.

Senator PORTMAN. So it is not that complicated. If we are not willing to fund ICE beds and under *Flores* you cannot hold people for more than 20 days and you cannot process people during that time period, it leads to a bad situation. Is everything perfect on the border? No, it is not. There is overcrowding.

Now, I will say at the Donna facility, which is a soft-sided facility, we did not see the overcrowding. It is a new facility. My understanding is you have a new processing facility for adult males. Is that up and going yet? I know you are talking about putting a new one in place.

Mr. MORGAN. It should be in the next 10 days, sir.

Senator PORTMAN. In the McAllen—

Mr. MORGAN. Yes, sir.

Senator PORTMAN [continuing]. District as well. I think that Congress has a pretty obvious choice here, which is, one, how to deal with the immediate crisis, provide the ICE beds, provide more judges, expedite these processes as much as you can, take away the ability for traffickers to say if you just walk in, you get in; otherwise, this continues. Second, we have to look at the root causes, and that does include our asylum system. I have been promoting this idea, and some Democrats have expressed interest in this, in having people processed in their home country or in a third country. United Nations High Commissioner for Refugees (UNHCR), the United Nations, does it all over the world, and they have four or five processing centers in Central America. They have one in Mexico. They have expressed some interest in working with us on that. That to me makes a lot of sense. It is the same criteria as the asylum criteria, the credible fear. And then what the Chairman has talked about in terms of expediting the processing, Operation Safe Return. And then, finally, more effective aid to these countries, because we have spent a lot of taxpayer dollars in the Northern Triangle, and, obviously, the results have not been impressive in terms of the socioeconomic conditions and the great poverty that is down there. There is no question about that. We can do a better job.

But we cannot address that problem and expect that someone, again, who can make 10 to 20 times more coming to this country is not going to continue to have that incentive if, in fact, we have a system in place that allows them to come into our country.

On the asylum front, of course, people that have a credible fear ought to be taken care of, but when you get to the end of that process we talked about earlier, after the 4 or 5 years, only 15 percent of those migrants are granted asylum. And that can be determined much earlier in the process, and preferably earlier in the process so they do not have to make the long and arduous and dangerous journey north, which so many traffickers are exploiting so many poor families in Central America to take that journey.

Anyway, thank you for your service, both of you. Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Hassan.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you, Mr. Chairman and Ranking Member Peters, for this hearing, and thank you to both of our witnesses for being here today.

I also want to take a minute to thank the men and women of the Border Patrol for their hard work and to thank so many of them who I know work to save lives on the border every day.

I also want to note that we can absolutely address the root causes of this crisis, which are multiple, and improve conditions for migrants and secure our border without taking up controversial issues like the *Flores* decision.

Mr. Morgan, 3 weeks ago I asked CBP's Chief of Law Enforcement Operations Directorate, Brian Hastings, about the conditions at the Clint, Texas, Border Patrol facility following reports by a group of lawyers sent to inspect the facility describing the horrid conditions endured by migrants detained there. Mr. Hastings repeatedly dismissed the reports as not true, and he implied that the lawyers were exaggerating solely to advance the case of their clients. Only 6 days later, Ms. Costello issued a report about facilities in the Rio Grande Valley depicting some of the same troubling conditions as reported by the group of lawyers that inspected the Clint facility.

Mr. Morgan, I have been to the border twice, and I get that the Border Patrol is overwhelmed and that its agents feel like they are under fire. However, our job in Congress is to conduct extensive oversight and to use that oversight as a way to help drive our funding decisions and to uphold our values.

When senior officials from the Border Patrol refuse to be transparent or seek to mislead Congress, it does serious damage to the credibility of the entire Border Patrol. It exacerbates agents feeling as if they are under fire. Most importantly, it undermines the security and humanitarian mission that we are all grappling with. It keeps us from addressing the root causes in the way we need to.

So to that end, Mr. Morgan, please answer yes or no to the following: Will you commit to giving Congress full visibility into the Border Patrol, its detention practices, its treatment of all migrants, and any credible allegations made by detainees?

Mr. MORGAN. Yes.

Senator HASSAN. Do you have the support of your superiors, namely, the Acting Homeland Security Secretary and the President, to be fully transparent with Congress as you deal with this crisis?

Mr. MORGAN. Unquestionably I do.

Senator HASSAN. Thank you. Will you take appropriate action if any CBP or Border Patrol subordinate seeks to mislead or deceive Congress or the American public?

Mr. MORGAN. Yes.

Senator HASSAN. Thank you. Mr. Morgan, there really are two different crises occurring at our border facilities. The first is the lack of supplies and space driven by the huge surge in migrants.

Congress has passed an aid package to address the surge with our own surge of resources. More needs to be done, and it will be.

However, the second crisis is much deeper. Allegations of cruel and the illegal treatment of migrants in Border Patrol's custody have plagued the agency in recent weeks. These allegations include the sexual assault of an underage migrant, the attempt to humiliate a migrant by forcing him to wear a sign that says, "I like men," and intentional deprivation of basic necessities of migrants, including children, as a way to punish them.

Mr. Morgan, this troubling pattern of the Border Patrol's culture—and I know it is not everybody in Border Patrol—has to be addressed immediately. What steps are you taking right now to change this culture?

Mr. MORGAN. First of all, I think we have to be cautious about, when there are allegations that have not been fully adjudicated yet, to refer to this as a pattern or part of the culture. I do not believe that, ma'am. I served as Chief of the United States Border Patrol, and I would not say what you described is a culture within the Border Patrol or a pattern. But what I will say—and I promise and commit to you—is that any allegation will be thoroughly and completely investigated, and anybody, any man or woman, in the United States Border Patrol or CBP that violates their oath and violates what they swore to do and uphold, I assure you that they will be held accountable for and properly disciplined.

Senator HASSAN. I thank you for that. I will note that the revelation about the Facebook page and the number of people participating in that tends to give credence to the notion that there is a troubling culture, at least among some of the officers. What I am trying to just get at is what you are doing to make sure that you are disrupting that culture and improving it.

Mr. MORGAN. Yes, ma'am. On the Facebook, the 1015, I would be more than happy to, offline, come to your office and provide you an extensive brief of exactly what we are doing in that matter as well. But I will say it is one of those posts that we all know about is horrendous.

Senator HASSAN. Yes.

Mr. MORGAN. Absolutely, hands down. But I can assure you that overall this is a very small group of Border Patrol agents.

Senator HASSAN. Ms. Costello, do you think CBP is doing enough in terms of addressing the issues of culture that I just outlined?

Ms. COSTELLO. So we do not really have any information on what they are doing in the culture, but I can tell you that we are also looking into that Facebook issue, not so much the conduct of the specific agents themselves, which is better investigated by CBP's Office of Professional Responsibility (OPR). But what we are looking into is the allegations that leadership knew and was using the sight for information, so who knew what when and was appropriate action taken when it needed to be. I think perhaps in the course of that review, some information about culture might be elicited.

Senator HASSAN. Thank you.

Mr. MORGAN. If I could add, ma'am, we are working with the IG every day. On Facebook, for example, right away we got with the IG, and we continue to work with them.

Senator HASSAN. I appreciate this. I just do want to point out that it is going to be very important that you all are transparent about what you do and do not know. As you investigate allegations, you have to be transparent with us and the American public so we can improve, because these kinds of reports and these kinds of behaviors that are reported and the conditions are really hampering our capacity to address a security and humanitarian crisis at our border, and that is something we all need to do together.

Mr. MORGAN. You have my absolute commitment to full transparency.

Senator HASSAN. Thank you.

I have one other issue, and I am going to touch on it very briefly because I am just about out of time, but it has come to my attention, Mr. Morgan, that in May a Customs and Border Protection subcontractor, a company called "Perceptics," was a victim of a cybersecurity breach. Hackers stole tens of thousands of photos of travelers' faces and license plates collected by CBP on the U.S.-Mexico border from the subcontractor's network and then leaked these images publicly. This breach has serious implications not only in cyberspace but also for the security of our borders.

It is my understanding that this data was not supposed to be present on the subcontractor's network to begin with and that CBP has since terminated this contract. However, this begs a bigger question about the vulnerability of CBP because its subcontractors seem not to be taking cybersecurity seriously.

So realizing my time is about up or over, what I would like to do is work with you and follow up with questions about this to ensure that the contractors and subcontractors adhere to the highest cybersecurity standards.

Mr. MORGAN. Absolutely.

Senator HASSAN. Thank you. Thank you, Mr. Chair.

Chairman JOHNSON. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Thank you, Mr. Chairman. Both of you, thank you for the work.

I just returned back from the border last weekend, spending last weekend at five different facilities in the Rio Grande Valley area and then spent much of the night riding along with members of the Border Patrol as they did night patrols to get a feel for what is really going on on the ground.

I went into each facility and asked to be able to see their supply room, to see food, water, hygiene products, diapers, clothing, toothbrushes. In every facility that I went into, all of those supplies were there in ample supply. I also found in some of the facilities a couple of pieces of used equipment like car seats, and I asked about that and said, "These seem like used car seats. Where did they come from?" And they said some of the children have to be moved to different places, and so Border Patrol agents have brought their own car seats for their kids here to be able to make sure these kids have car seats when they actually move from facility to facility.

What I found was a tremendous number of very professional people trying to be able to find a way to be able to manage a problem

where they have thousands upon thousands of people coming at them.

In the McAllen station, in that area alone they have 1,500 to 2,000 people a day that are coming across the border illegally, and they are trying to figure out ways to process them. When I asked the agents, "What would help you the most?" the first response I got from everyone was, "Allow ICE to be able to detain people. That is what they do, not what we do." What I heard as a pretty clear statement was when this whole movement on abolish ICE or defund ICE came about and the push to not allow ICE to get more funding and the adamant pushback we have had on adding additional funding to ICE, it is backing up thousands of individuals into Customs and Border Patrol facilities to be able to be held while they are waiting for a place for them to go. We have almost 50,000 beds in ICE facilities but 4,000 beds in Customs and Border Patrol. When you have thousands of people a day coming at them with nowhere to go, you are not going to just release them on the street. That is not the obligation of Federal law enforcement just to release people. It is to be able to process and find out who is a risk and who is not a risk and then to figure out how to be able to transition them.

So my simple question to you is: Are your facilities designed and set up to hold thousands of people? Is that the mission of Customs and Border Patrol?

Mr. MORGAN. Absolutely not, Senator. We have stated that again and again and again.

Senator LANKFORD. I have heard it, and so much of our conversation at this dais and through Congress is what we are going to do to get Customs and Border Patrol in a better position to hold more people, ignoring the obvious question: Why are we not adding additional funding to ICE? That is what they do. They do have the facilities. They do have the contracts. They do have all of the oversight there to be able to allow a lot more people to be held as they are trying to process them.

So I am a little frustrated that our conversation seems to be what can we do to help Customs and Border Patrol be better at detaining people when that is not even the mission of Customs and Border Patrol.

Mr. MORGAN. Yes, sir, and that is correct. Right now, just in the past 60 days since the IG review, we have done so much. We have created four soft-sided facilities for family units alone, a capacity of over 2,000; two more soft-sided facilities are coming on for single adults, a capacity of 4,500. I could keep going. Modular systems we are setting up. I could keep going on and on. This is tens of millions of dollars a month we are spending on this. We are talking about for us to do more and for CBP to get more for these temporary facilities, when you just outlined the answer, we fund ICE. We asked for \$200 million in the supplement. It was denied. And then we question why we are overcrowded. We are overcrowded because ICE does not have the funding to have the bed space as the system is designed. We are interdependent. We are overcrowded in part because HHS was overcrowded, because ICE was overcrowded. It was not being properly funded, and ICE is still not being properly funded.

Senator LANKFORD. No, it is not, and that is part of our challenge that we have to be able to break through this. We are spending over \$200 million on one soft-sided facility this years instead of giving \$200 million to ICE to be able to manage all of those. So it is not only wasteful to the taxpayer; it is not fair to those men and women that are serving Customs and Border Patrol to be able to help do something that they were not first set up and trained to do to try to do makeshift facilities rather than actually to have better facility for folks to be able to go through this process.

I had lots of questions there about the *Flores* settlement, and we have even heard some conversation on this dais that the *Flores* settlement is not the issue. What I heard when I was at the border was adults that are traveling with a child, when they arrive with a child and there is a 20-day clock that is ticking at that point, are we able to get criminal records from countries outside of the United States, obviously, from other countries within 20 days of who this adult is traveling with this child?

Mr. MORGAN. Not efficiently.

Senator LANKFORD. So some countries can, some countries cannot. Is that correct?

Mr. MORGAN. That is correct.

Senator LANKFORD. So do you have situations where you have had to release an adult because of this time period, this *Flores* Agreement time period, where you have released an adult traveling with a child and later discovered that that adult is a felon from that country?

Mr. MORGAN. I do not have those statistics, sir.

Senator LANKFORD. I will tell you what I heard this past weekend from some of the Border Patrol folks that I talked to there on the border. They gave me two specific examples that have happened recently: that they released an adult and then found out after they released an adult with a child and then found out 2 weeks later that that adult had a murder warrant in their home country, and they just released them into the country, and they could do nothing about it.

I also found out that—one of the agents was telling me they had released an adult traveling with a child, and then found out after they were released when they got the criminal records in from the home country that that was a convicted pedophile from that country now traveling with a child somewhere in our country. Because we could not detain them for longer than 20 days and we could not get those criminal records, they are released in the country, and they are traveling with a child.

The other thing that I heard that I thought was interesting was it was children that were maybe 7 to 10 years old that were traveling with adult males. But when I got to the facility in McAllen last week, it was almost all infants and very young children. When I asked about that, they said, "We were able to pull people out and separate the child from the adult, interview the child, and the child could often tell us, 'That is not my dad.'"

Now, with infants, you cannot do that anymore. Have the cartels changed methods?

Mr. MORGAN. Absolutely. That is why they are a multi-billion-dollar organization, because they change and they profit from it

every single time. Border Patrol alone has identified 5,800 fake families. HSI, an investigative element of ICE, has put resources down there. They discovered hundreds of fake families. The stories are happening every single day, and it is very clear. It is very clear, Senator, that they know, you grab a kid, that is your passport into the United States because of the *Flores Settlement Agreement*. That has to be changed, and it is going to take a legislative fix to do that.

If that does not happen, all this other stuff we are talking about, the care which we absolutely have to do, it does nothing, though, to stem the flow. If we do not address the *Flores Settlement Agreement*, they are going to keep coming.

Senator LANKFORD. OK. Mr. Chairman, I yield back.

Chairman JOHNSON. Thank you, Senator Lankford. Excellent line of questioning.

I want to quick follow up before I turn it over to Senator Rosen. Where are we at in terms of Deoxyribonucleic acid (DNA) tests? Because when we were down there, there were some pilot tests of that. It is about \$200 per DNA test. Are we doing more of those or is that on hold?

Mr. MORGAN. So ICE is in charge of that program, so they did do a pilot program. It was very successful, and they asked for additional funding in the supplemental, which they were granted. So they are going to begin to expand that program. But right now I do not know the specific details of where and when. I would have to defer to ICE.

Chairman JOHNSON. Because we are really releasing right out of CBP, in many cases bypassing ICE. Won't Border Patrol have to do the DNA tests to try and get some handle on the fraudulent families?

Mr. MORGAN. Right now what is happening is ICE is actually deploying HSI agents to the Southwest Border to actually be in the stations to do that.

Chairman JOHNSON. OK. Senator Rosen.

OPENING STATEMENT OF SENATOR ROSEN

Senator ROSEN. Thank you. Thank you, Chairman Johnson, Ranking Member Peters, for considering my request to hold a hearing on conditions of migrant children at CBP facilities today on this critically important topic.

It is vital that we work together to ensure the safety and well-being of children, so I want to thank you, Commissioner Morgan and Deputy Inspector General Costello, for your testimony, for your work, and your commitment to doing the right thing here.

I asked last month for three needed reforms. I placed a hold on two DHS nominees. I am going to keep my hold in place until the facilities drastically improve. As you know, a couple of weeks ago, we went down and we visited Donna, McAllen, and Ursula, saw the conditions of the detention centers holding migrant children. They are slightly better than what was reported weeks prior, and those facilities are still no place for children to stay for prolonged periods of time—or really any amount of time.

I have been advised by child welfare advocates from various non-profit organizations that there are three immediate changes needed

at CBP: one, more medical professionals with pediatric experience at CBP facilities; two, the hiring of trauma-informed child welfare professionals to ensure the best interests of the children are being met; and, three, providing NGO access to CBP facilities to assist with humanitarian efforts.

Last week I sent a letter to Secretary McAleenan outlining these needs, and in spite of the urgent situation at the border, I have yet to hear back from him. So I am asking in the interest of time if you would answer these similar questions in yes-or-no fashion.

So, Commissioner Morgan, who currently—well, this is not a yes-or-no. Who currently screens children for illnesses or injury after apprehension by CBP? Is it a medically trained professional?

Mr. MORGAN. So we have a couple areas, ma'am, that I will not quickly. So we have Border Patrol agents who, when they are first apprehended, do a first layer of screening, whether an emergency medical technician (EMT) or advanced EMT. Once they get to the processing center or the place where they are going to be held, then they are also screened. The majority of the children right now are screened by a medical professional, such as a nurse practitioner.

Senator ROSEN. Are they using standardized screening tools?

Mr. MORGAN. Yes, ma'am. The protocols were actually developed by a physician that we have at DHS that has designed those protocols with respect to medical standards and industry.

Senator ROSEN. So they are taking vital signs such as body temperature, blood pressure, and heart rate?

Mr. MORGAN. Yes, ma'am, every single one. They actually have a range of temperature they file as part of the protocol. If it falls within that range, that means immediate transport to a hospital.

Senator ROSEN. Do all CBP facilities have adequate working medical equipment for children?

Mr. MORGAN. No, all do not. We are doing it by flow and threat and need right now, but we are expanding that every single day. Seven of the nine sectors have it. Over 20 of the 70 stations have it. Every day we are putting more medical resources online.

Senator ROSEN. Thank you.

Mr. MORGAN. Supplemental health.

Senator ROSEN. If a child is found to be injured or sick, is there a process for them to receive additional evaluation by a health care professional?

Mr. MORGAN. Yes. We work with local emergency medical services (EMS), local medical facilities as well. Again, based on those protocols, if the individual is meeting those standards, we transport them immediately to a hospital.

Senator ROSEN. Do your medical professionals onsite at those facilities walk into pods or cells to look for sick individuals who may be too young to voice their needs, unable to ask for help, or are too afraid to ask for medical attention?

Mr. MORGAN. So we do do welfare checks. Whether each one of those welfare checks they actually go into the holding facilities, I would need some more fidelity on that. But there are welfare checks that are mandated by TEDS every 15 minutes.

Senator ROSEN. Approximately how many more medical professionals with pediatric experience and child welfare professionals do you plan to hire?

Mr. MORGAN. That is a good question. I would say I am welcome to anyone that you just described that continue to work with us to help us come up with that strategy and end game. We are welcome to any ideas and suggestions. But those numbers are being worked right now, again, from the physician that DHS has as the overall medical coordinator as well as other, I would say, health care provider associations.

Senator ROSEN. I am going to ask, is there pediatric mental health screening in detention?

Mr. MORGAN. Not at this time. Again, I would just say that I understand, but, I want these children out of—even the soft-sided facilities, I agree with you, ma'am, that is not where kids should be. I want them out of there as fast as possible to a more adequate environment.

Senator ROSEN. So who is ensuring that very young children have their basic needs met, such as diaper changing, feeding, bathing or brushing teeth?

Mr. MORGAN. We actually have coordinators in every one of those facilities, and the Border Patrol and other agencies that are helping with this are responsible for that. We actually have detailed logs when someone is fed, whether they receive a hot meal, a cold meal, how many times they receive a shower, etc. We have detailed logs on that.

Senator ROSEN. So you have expressed just now interest in working with me to make some things happen, so are you developing a policy to provide access for NGO's to CBP facilities to assist with these humanitarian efforts?

Mr. MORGAN. So what I can say is those have been ongoing discussions, and, Senator, I am absolutely willing to work with you to come up with a workable solution.

Senator ROSEN. Because we do have people willing to come in to help alleviate some of the situation and provide comfort care specifically for children.

Mr. MORGAN. Yes, ma'am, what I can say, in the 115th and 116th Congress, you have had over 100 codels, staff dels almost the same number. We have had countless numbers of IG reports and other access and reviews. So we are not shying away from—

Senator ROSEN. But we would like to see NGO's have better access, to be sure they can evaluate children who oftentimes cannot express concern or express what is happening to them. So I would like to be sure that we are able to do that and can work with you. I have people ready, willing, and able to come to your facilities.

Mr. MORGAN. Yes, ma'am.

Senator ROSEN. I just have a short time left. I want to be sure that—Senator Hassan talked about abuse. Can you talk a little bit about the process for migrants to safely report any abuse that they have and if they are aware of that?

Mr. MORGAN. Yes, again, from the start, they have the ability from the moment that they are apprehended to report anything. What we have found, though, is once they leave Border Patrol custody, CBP custody, and they go to HHS, specifically for the children, that is when we found that most of the reporting is being done after they leave our custody.

Senator ROSEN. So they are not reporting there. They are reporting after they leave.

Mr. MORGAN. That is what the statistics show, yes, ma'am.

Senator ROSEN. To your knowledge, is there a confidential process there for them to report so they do not receive retaliation wherever they go in the future?

Mr. MORGAN. Yes, ma'am. It is hard to have that confidentiality when you are in a central processing center or the soft-sided Donna facility that you saw. That is why it opened. But we absolutely take every allegation seriously and do everything that we can to make sure that it is followed through and we coordinate with the appropriate entity, whether it is the IG, Civil Rights and Civil Liberties (CRCL), or any other appropriate entity.

Senator ROSEN. Do you have a specific place where the logs are kept once abuse is reported, do you have a central location where that is kept so that NGO's or other places can take a look and see what is going on?

Mr. MORGAN. Yes, ma'am. So we have a Joint Information Center (JIC). So anytime there is a complaint or alleged complaint, that goes to the JIC that OPR from CBP manages, and that database is kept.

Senator ROSEN. So if NGO's want to come in and represent someone, there will be transparency with these records?

Mr. MORGAN. So there is some privacy concerns with respect to ongoing investigations, but I would be more than happy to work with you offline to see where we can reach an appropriate compromise for transparency. But there are privacy concerns with respect to investigations.

Senator ROSEN. Thank you.

Chairman JOHNSON. Senator Sinema.

OPENING STATEMENT OF SENATOR SINEMA

Senator SINEMA. Thank you, Mr. Chairman, and I appreciate our witnesses being here today.

I remain extremely concerned about the recent allegations regarding the treatment of migrants at the Yuma Border Patrol station. I am committed to fixing our broken immigration system, finding solutions to the ongoing crisis at our Southern Border, and ensuring that migrants are treated fairly and humanely.

The recent reports regarding what happened in Yuma clearly indicate we need to do better on all those fronts, so I look forward to our witnesses shedding light on how CBP can do better and how Congress can help do better.

My first questions are for Mr. Morgan. As you know, a big part of the problem at Yuma seems to be communication between HHS and CBP. The news of the Yuma allegation broke because NBC News obtained incident reports put together by HHS case managers after migrant children had left CBP custody. But it is unclear to me if the HHS information flowed into CBP in an efficient manner and in a way that CBP could then take immediate action to ensure the well-being of these children.

What steps is CBP taking or have you already taken to improve the response and ability to respond in a timely fashion to allegations that come through HHS?

Mr. MORGAN. Senator, you are right, I think there is definitely an area where we can improve the flow. There is an old saying: "Justice delayed is justice denied." And so I think we can get better at that.

Once we saw that article, we actually immediate worked with the IG. There were three separate allegations contained in the article. One of them had already been opened and was already being worked by the IG. The other two, based on the article, we opened up our own investigations. And then we went to HHS ORR to ask them about the alleged 30 that were contained in the article. What we found is that on a consistent basis ORR sends those to CRCL Division, which is good. It is another layer of oversight, because some of the allegations are not always specific misconduct of employees and may say, "Our cell was too cold or too hot," which still needs to be looked upon and action.

And so then we coordinated with CRCL. We found out through this process that 381 entries had been made by ORR with respect to a series of allegations. We actually obtained all 381. OPR triaged those, and because of that, we opened up 23 additional investigations.

Now, having said that, the bottom line is what we are trying to do is work with CRCL and HHS ORR, and what we asked them to do and they have agreed is, as they sent it to CRCL, they also send those significant activity reports directly to CBP OPR so we can action them right away.

Senator SINEMA. So then, Commissioner, you are getting them in real time as of today?

Mr. MORGAN. I cannot speak as of today, but that is the end state, and we are working with them.

Senator SINEMA. OK. My second question is: As I understand, the information from HHS, as you said, enters DHS through the CRCL or through the OPR. But when OPR receives the series of allegations, how do they use that information to prevent additional incidents? So what do they do to take action, one, to protect the alleged victims at the time and then also to prevent that same behavior from allegedly occurring to other individuals? And what mistakes were made in this overall communications process that you all have learned from that you can fix and change for the future?

Mr. MORGAN. So through OPR—we also work with them, and so it is not just about the investigations, but then it is also—once it has been adjudicated and effective discipline has been handed down, we also look at that and analyze that and then take that back to the field to see, hey, are there other areas that we can improve upon. So it is not just about handing down the discipline, as you said. It is about taking corrective actions to get better at what we do to try to prevent any other incident from happening in the future.

As far as the coordination and control, again, as I explained, it is continuing to work with CRCL, it is continuing to work with HHS ORR to make sure we have a streamlined system as far as reporting. What we have asked them to do is give that, and that goes directly into our JIC that I talked about a minute ago, and then it gets actioned immediately.

Senator SINEMA. For children who have alleged sexual abuse, that obviously is quite different than an allegation that a cell is too cold or someone does not have a blanket. One you rectify by changing the temperature and providing a blanket. The other, alleged harm may have already occurred with the resulting trauma that comes from that. What actions are taken to provide appropriate mental health care to children who may have been traumatized by these alleged sexual assaults?

Mr. MORGAN. Again, I would have to refer to HHS ORR because once they are released from our custody and the allegation is made, as far as continued care for that child, it is really outside our purview.

Senator SINEMA. OK. My next question is for Ms. Costello. According to the news reports—and we just mentioned there were 30 allegations of issues at the Yuma facility that flowed from HHS to DHS. Did your office get to see all these complaints right when HHS transmitted them to DHS? From your perspective, how could the information sharing between HHS and DHS as well as between components of DHS be improved?

Ms. COSTELLO. Thanks for the question, Senator. We did get your letter on this matter. I think Mr. Morgan has accurately described this process, and your letter and the news reports caused us to go back and take a look as to how this was working, and he is correct. HHS is getting the allegations to the Civil Rights and Civil Liberties Office, who is passing them on to CBP. And then because of our right of first refusal, they are coming to us.

We are going to start taking a look into that as a result of your letter. I think my staff is scheduling a meeting with your office to see can that be improved. There was such a large number of allegations here, and I know we knew about some of them. As Mr. Morgan said, we actually opened on one of them. But it does seem to be a more systemic issue—right?—that is more appropriate for one of our other offices to start taking a look at as opposed to individual investigations.

So we are going to be following up with your staff and to try to get some answers to those questions that you posed in that letter.

Senator SINEMA. Thank you.

Back to Mr. Morgan, strictly from a personnel perspective, what changes need to be made so that CBP can more effectively manage the overcrowding that we are experiencing at some of these facilities? Do we need a different mix of people working at these facilities? More training? Do we need more social workers, more medical personnel? What is it that we need in order to address allegations and prevent them from occurring in the future?

Mr. MORGAN. Ma'am, two different things, allegations and overcrowding. The overcrowding, I will continue to go back to we need Congress to pass meaningful legislation to stem the flow, and that will impact the overcrowding.

But specifically to allegations of misconduct, again, I will go back. I think that these allegations are rare instances, although one is more than enough. We are committed to working with CRCL, IG, to make sure that those cases are investigated thoroughly and that appropriate disciplinary action is taken, and that

those individuals, to the best of our ability, are removed from those areas right away.

Senator SINEMA. OK. Thank you, Mr. Chairman. My time has expired.

Chairman JOHNSON. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Mr. Chairman. My thanks to you and our Ranking Member for calling this hearing, and our thanks to both Mr. Morgan and Ms. Costello for your work and your presence.

My colleagues to my left have heard me talk about root causes so often that I am sure they are sick of it, and perhaps some of the folks in the audience are as well. But we are going to be sitting here asking these same questions 5 years from now, 10 years from now, unless we address the root causes for why these hundreds of thousands of people want to get out of their countries and get into our country.

We have asked questions of a lot of people in Honduras, Guatemala, and El Salvador, "Why are you trying to leave your country and make it to the United States?" They basically say three things. They say, one, lack of hope, lack of economic opportunity in their native country; two, crime and violence; three, endemic corruption. Endemic corruption. Until we help them satisfactorily address those causes, they are going to keep coming.

The Chairman has heard me say this before. We traveled together in Central America and on the border, and it is a little bit like Home Depot. What they say at Home Depot: "You can do it. We can help." We cannot do this for them, but we are responsible for it by virtue of our addiction to drugs. We are largely—not entirely but largely responsible for the conditions that force a lot of people, compel a lot of people to come to our country. So I would just say this as a predicate.

A couple questions, if I could, for Mr. Morgan. Ms. Costello, if you want to correct him, you are welcome to do that. But, Mr. Morgan, can asylum seekers currently apply for asylum or refugee protection in the United States without leaving their home countries?

Mr. MORGAN. No.

Senator CARPER. Alright. Would you support the creation of an in-country processing program to allow asylum seekers to avoid making the dangerous journey to our Southern Border?

Mr. MORGAN. Yes.

Senator CARPER. Why?

Mr. MORGAN. So we talk about and you talk about, sir, the root cause, identifying the root cause of this. We have to stem the flow. Asking someone to either claim asylum, apply for asylum in their home country, or the first country they come to outside of the country that they are alleging they are fleeing persecution from will do just that. It will stem the flow. Again, the overwhelming majority of the individuals that come to our border that are claiming fear are found to be unsubstantiated, meaning they came here as an economic migrant and they did not come here with respect to the technical definition of asylum, persecution, and fear of persecution

based on race, ethnicity, and religion. It would absolutely, almost overnight, begin to stem the flow.

Senator CARPER. Ms. Costello, would you approve this message? I know this is not necessarily your area of expertise, but go ahead.

Ms. COSTELLO. That is what I was going to respond. As the IG, the situations outside this country, the push-pull factors, are really beyond our jurisdiction.

Senator CARPER. I understand.

Ms. COSTELLO. So we cannot—

Senator CARPER. I just thought I would give it a shot.

Ms. COSTELLO. Thank you very much, Senator. But we cannot comment also on those policy decisions, but what we can commit to is evaluating the effectiveness of the programs once they have been established.

Senator CARPER. That is good. Thank you.

Mr. Morgan, another question for you if I could. You recently served as the Director of ICE, and I just would ask: Is it reasonable to think that ICE could detain every undocumented immigrant in this country through their removal proceedings? Are there other programs like alternatives to detention that are less costly and could be expanded for non-criminal immigrants?

Mr. MORGAN. So I do not think it is reasonable to say that every single individual that is here illegally in the United States would ICE be able to detain. No, I do not think that is realistic, although I still think they need enhanced funding to increase their ability to detain a greater population.

With respect to other innovative ideas, I think we need to continue to talk, I think we need to continue to come to the table to talk about other effective ways besides detention. But what I will say is, though, the stats will show that if they are detained, it is more efficient, more effective, the entire process. In the non-detained docket, to include alternative detention, it has not proven to be fruitful, and it is actually quite costly, and the end result, we are having people that remain in this country illegally.

Senator CARPER. Would you support expanding alternatives to detention in order to reduce the strain on CBP resources at the border?

Mr. MORGAN. Again, sir, I think my response to that is I would be committed to having a discussion with you about, continued alternatives, because we are overwhelmed, ICE does not have the appropriate funding. What I would like to be able to have a discussion about is where can we come maybe to a happy medium, to increase funding to ICE, to increase the bed space immediately, so that we can get some relief at CBP, while at the same time maybe come up and discuss alternatives to detention.

Senator CARPER. We would call that a “compromise” around here.

Mr. MORGAN. It is hard to see that sometimes, sir.

Senator CARPER. Actually, we reported out a bipartisan compromise, a 5-year surface transportation bill this morning on a 21–0 vote, and so there is hope in a hopeless world.

My colleagues and I have traveled to Central America together, and I look forward to going back down there again. One, if you look at the flow of folks coming out of those three countries—Guatemala, Honduras, and El Salvador—a big part of the problem in

Guatemala is agriculture-related, people who grow coffee in the highlands. And they have had drought after drought after drought, year after year after year. They are bailing out of there to try to get out of there so they can make a living, and they see they have some opportunities here.

But if you look at what is—the outflow from El Salvador is not as great as it has been from Guatemala and Honduras. What is happening, one of the things that has happened—this is a lesson for them and for us. They have elected a new President in El Salvador who is, I think, 37 or 38 years old. Bukele is his name, and he was mayor of San Salvador, a city of 2 million people, for a number of years and ran for office. He succeeded a 75-year-old former guerrilla leader. I think the people in that country feel a sense of hope.

Meanwhile, in Honduras, Juan Hernandez, the President, about a year or so ago basically asked his supreme court, appointed by him, to declare their constitution unconstitutional so he could run for another term. He won, allegedly, reelection by a narrow margin. The people there are still outraged, up in arms, and they have had it.

If you go over to Guatemala, Jimmy Morales, the President there, for whom I had high hopes, has turned out to be an enormous disappointment with respect to corruption, family corruption, all kinds of things, and he is basically going to be done, gone, by the end of this year. But the people in that country are just fed up with the corruption that is going on, and we cannot be silent about—our administration and we in Congress, and when we go there, we need to speak out. We need to speak truth to power.

Mr. Chairman, I look forward to traveling perhaps later this year with you and Senator Peters to go down there and get a fresh look at what is going on.

The last thing I will say, things are really galling in Guatemala. The former attorney general there, Thelma Aldana, who is highly regarded—she was attorney general for a number of years. She was death on corruption, and when she wanted to run for President, they basically would not let her in the country. They kept her out of the country. She could not run. Just shameful.

Thank you.

Chairman JOHNSON. Senator Carper, I think we are going to be traveling down to Central America in October, so I would love to have you join us.

I think it was interesting, Commissioner Morgan's comments about his meeting with the government officials down there, the same comment we heard in 2015 from both Presidents of Honduras and Guatemala. "Fix your laws that are attracting young people. Really, we are losing our future to America, so fix those laws." That has been a consistent theme.

Now, I think at the same time Central America does like the remittances, but I think they are starting to realize that depopulating their countries is not a real good deal for the long-term future of those nations. So hopefully we will be on the same page. You talk about compromise. I am always looking for areas of agreement. It is a lot easier.

Senator Peters, do you have a couple questions?

Senator PETERS. I do. Thank you, Mr. Chairman.

Mr. MORGAN, it is my understanding that CBP is conducting a pilot program to train Border Patrol agents as asylum officers to conduct credible fear interviews, and I would just like to have a little bit more information on the pilot program. How long is the training for these participating agents?

Mr. MORGAN. I am not sure what the duration is. That is really set by USCIS and their standards.

Senator PETERS. So could we get that information? I would like to have that.

Mr. MORGAN. Absolutely.

Senator PETERS. How many of these agents have been deployed to date and to what locations?

Mr. MORGAN. I do not have those numbers.

Senator PETERS. You will get those for me as well?

Mr. MORGAN. Absolutely.

Senator PETERS. So you probably do not have the answer to this as well. Once deployed, what percentage of their time is spent conducting interviews?

Mr. MORGAN. Again, I do not have that information, but I will get that to you.

Senator PETERS. Do you know why this pilot was initiated? Was it because of a lack of asylum officers at USCIS? Or was it for the goal of reaching different outcomes?

Mr. MORGAN. My understanding, it was a lack of USCIS asylum officers.

Senator PETERS. If that is the case, would you agree that we should be investing in the hiring and training of additional USCIS asylum officers?

Mr. MORGAN. Yes.

Senator PETERS. If the USCIS had additional capacity and these Border Patrol agents no longer are needed to conduct these credible fear interviews, would the agents in the pilot program be able to return back to line and patrol duties?

Mr. MORGAN. I would like that very much.

Senator PETERS. That would be your intent if that happened?

Mr. MORGAN. Yes, sir.

Senator PETERS. Is the officer wearing a uniform and carrying a gun when they conduct these interviews?

Mr. MORGAN. They would be wearing a uniform and carrying a gun.

Senator PETERS. They would be? They would be in traditional—or their regular uniform?

Mr. MORGAN. Yes, sir.

Senator PETERS. Do you know if the CBP is seeking to expand this program and train additional officers to conduct credible fear interviews?

Mr. MORGAN. My understanding is we are, but I will get back to confirm that for you.

Senator PETERS. So in addition to that, we would need to know how many officers that you are expecting. I do not believe you would know that at this point, either, so—

Mr. MORGAN. Absolutely.

Senator PETERS. So we would need to have more detailed information on this, and I appreciate working with you and your staff on that.

Mr. MORGAN. Yes, sir.

Senator PETERS. What has been striking to me in the discussion about detention standards is that there seems to be a great deal of variability in the experience that lawmakers have when they go to the border. We hear different stories from different lawmakers, administration officials, lawyers, advocates, and perhaps all these experiences could be true because the situation on the ground obviously changes on a daily basis, and conditions can deteriorate very rapidly.

So, Ms. Costello, my question to you is: What is your take on the variability across sectors and even detention locations within a sector? What type of challenges does this pose for you as the OIG in identifying recommendations for an enterprise improvement program across the entire enterprise?

Ms. COSTELLO. So the experience of our inspectors has been that it changes rapidly, and I can give you an example, although we have not publicly reported yet on our observations in Clint. We actually went there in April, and we did not see some of the things that were reported on later on. I am not saying that they did not happen. It is just I think that is a good illustration of how quickly things can change.

Another example from our reporting is what I testified to earlier, that on one day we had a facility with 125 maximum capacity at 750. The next day it was up to 900. So I think that is absolutely accurate, that you can go down and visit a facility and have a very different experience the next day.

In terms of pinpointing root causes, that is going to make it difficult, and it is part of the reason why this effort has led us to look not at the push-pull factors outside the country, but led us to initiate work that is going to look at those drivers behind the 72 hours and why we are not meeting that standard currently.

Senator PETERS. Mr. Morgan, given this is a rapidly changing environment, could you describe how CBP retains visibility into facility standards and standards of care across these sectors given the rapid change that we can sometimes see?

Mr. MORGAN. Yes, sir. So TEDS is our guiding factor, just as it was for the OIG during the review. So every single facility uses that standard that was developed in 2015 for the care and feeding with respect to anyone in our custody.

Senator PETERS. Ms. Costello, the Council of Inspectors General on Integrity and Efficiency (CIGIE), plays an often overlooked role in facilitating the collaboration between multiple IGs. We have heard in testimony today this has to be a whole-of-government approach across a variety of agencies and IGs.

Has CIGIE made any changes to how the OIG community coordinates various oversight of border security efforts in particular that you are aware of?

Ms. COSTELLO. Not CIGIE in particular, but we have a very solid relationship with HHS OIG, with GAO, and with the Department of Justice (DOJ). As we have been doing our work on the border starting last summer, we have been in close contact with them.

Now, we cannot share specific findings if they have not alerted their own departments yet and reported to you, but in terms of how we are doing our work, exploring opportunities for joint efforts and the like.

Senator PETERS. Is there more you can do and help that you might need from this Committee to do it?

Ms. COSTELLO. Let me think about that, Senator, and we will get back to you. I think right now we have a positive relationship with the other IGs, and everybody is really committed to working together in space. But we can take that back to the office and think about if there is any other avenues that we could pursue and any help you could provide.

Senator PETERS. I appreciate it. Thank you. Thanks to both of you for your testimony today.

Chairman JOHNSON. Thank you, Senator Peters. By the way, if you have to go vote, I am happy to close out the hearing.

I have two lines of questioning here before we close out the hearing. I kind of want to go back to a line that Senator Lankford was talking about, the problems of releasing people that come across the border illegally rapidly into our country without really knowing who they are. It is just a reality. Our laws prevent us from holding people more than 20 days, and because we cannot get the information, we are probably releasing them even sooner than that in many cases. Correct?

Mr. MORGAN. That is absolutely correct. With respect to family units, since March of this year, the United States Border Patrol has been releasing family units directly. So in some cases, they are being released in under 48 hours into the interior United States.

Chairman JOHNSON. Because it really does not make a whole lot of sense to try and find the facilities to hold them for 20 days with this overwhelming flow. So instead of Border Patrol turning them over to ICE for a more thorough vetting process and then ICE releasing them, Border Patrol is doing it directly.

Mr. MORGAN. That is correct.

Chairman JOHNSON. That represents a real danger to not only potentially our country but to those individuals.

Mr. MORGAN. Especially with the amount of fake families that we are uncovering every single day.

Chairman JOHNSON. It is true that we really do not have time to determine is that the father or is that the human trafficker? Is that his daughter or is that his trafficking victim?

Mr. MORGAN. It is a challenge.

Chairman JOHNSON. So our broken laws are creating risks for these migrants, and so we do focus on that time in custody. Again, nobody would say these are really pleasant surroundings, this is exactly where you would want to spend the night. Nobody would want to spend the night in those conditions. But the reason we hold people in custody is we do need to take some kind of precaution in terms of where they are released, but even with the precautions we are trying to take, it is overwhelming the system, and people are put in danger, correct?

Mr. MORGAN. Not only are they put in danger, sir, but, again, that is one of the largest pull factors, and it is not going to stop. We have been talking a lot of stuff. Should we improve on our care

and quality of that? Absolutely. But we are still not addressing—that is addressing the symptoms. That is not addressing the actual disease. We need to stem the flow, and as long as our laws are where they are, you are going to grab a kid, that is your passport into the United States. They know that in the Northern Triangle countries, and they are exploiting that every single day.

Chairman JOHNSON. So let us talk about in my mind there are really three categories of people coming to this country illegally and being apprehended or port of entry claiming asylum. You have single adult males, which used to be the problem, the vast majority. Then you had people coming in as a family unit, generally one adult, one child. And then you have unaccompanied children. Let us start with the unaccompanied children. My information shows me of the 780,000 people that have come in illegally at the ports of entry, about 67,000 are unaccompanied children this year.

Mr. MORGAN. That is correct. The number is even a little bit higher.

Chairman JOHNSON. In the past, the composition of those unaccompanied children would be 70 percent are male, 70 percent are 15 or older. Is that composition holding largely true of the unaccompanied children?

Mr. MORGAN. Yes, and the majority of them are between 14 and 17.

Chairman JOHNSON. So, again, if they are more than 15, is they are male, certainly that would be the profile of an individual that might already be a member of a gang from Central America. Correct?

Mr. MORGAN. That is correct.

Chairman JOHNSON. Or if you come into this country, you cannot speak the language, you probably gravitate toward those areas, those pockets of other immigrants that speak your language that would be gravitating toward gang activity. Correct?

Mr. MORGAN. Your vulnerability to be recruited by a gang is exponentially higher under those circumstances.

Chairman JOHNSON. I am reading reports of the issues that schools are having to cope with. It is not just bilingual education. Now it is not only bilingual but different dialects from some of the mountain regions of Guatemala. Is that a problem?

Mr. MORGAN. Yes.

Chairman JOHNSON. In terms of the family units, the children coming in—and, again, you talked about 300,000 children, so you have 67,000 is unaccompanied children. Then you have over 200,000 is part of a family unit. Those would be children more of tender age, right? Which would be defined as, what, 12 and under or 14 and under?

Mr. MORGAN. It is changing on a regular basis, but we do find them to be a little bit younger. But I will have to follow up on the stats.

Chairman JOHNSON. I asked a question earlier about DNA testing. The few pilots or the few tests we have had show what percentage of people coming in that we determine are a fraudulent family? Do you have any sense for that right now?

Mr. MORGAN. I do not have the overall percentage, but we do have the numbers. Right now, Border Patrol, 5,800; and HSI, part

of ICE, they have identified hundreds since their pilot program of pushing agents forward.

Chairman JOHNSON. When I was down with Senator Peters and Senator Hassan, I saw about a 40- or 50-year-old man with about an 18-month-old girl, and, listen, I know children can be fussy. Having just talked about the fraudulent families, I have to admit I just looked at that situation right there, and that is not his daughter. And then we heard testimony from HSI of a child being sold for \$84 to be used by an adult to get in this country and exploit our laws.

Mr. MORGAN. That is correct.

Chairman JOHNSON. I mean, those are just the realities that are occurring here.

When we talk about how do we improve the situation, one of the questions you have to ask, what do you design the facilities to hold? What number do you use? Do we use 1.1 million people coming in here annually? Do we go back a couple years and have it be a couple hundred thousands?

Ms. Costello, what would your advice on that? Do we just assume that this is going to hold at 1.1 million people per year or potentially grow?

Ms. COSTELLO. I do not think you can assume that. Even just looking at the past statistics over the past years, it fluctuates. We are experiencing a rise in families this year based on the Department's statistics. So, without being able to really concretely weigh in on that, I would say that relying on any one of these numbers is probably not a sound idea.

Chairman JOHNSON. Commissioner Morgan, what numbers are you using as you are looking forward? You are obviously putting up temporary facilities. That Donna facility—by the way, those are, for temporary facilities, very nice facilities. That gives people, I think, a fair amount of comfort that Border Patrol is really actively working to improve conditions. But that is not cheap.

Mr. MORGAN. We are spending tens of millions of dollars; we are probably on target to spend around \$700 million, which a lot of that came from the supplement, on those soft-sided facilities.

Sir, if I could, Senator Peters asked me a question about whether the pilot program for Border Patrol agents, whether they were uniformed or not when they were doing the credible fear interview, and I misspoke. My staff actually told me that they are actually not uniformed and they do not carry a gun.

Chairman JOHNSON. OK. I will actually inform Senator Peters of that.

Mr. MORGAN. Thank you.

Chairman JOHNSON. Again, just going back to my question in terms of how are you designing the system, are you assuming the 1.1 million flow? Do you think that is the smart thing to do? Or do we just design a system where it really can be flexible, that if the flow is reduced, we can adjust?

Mr. MORGAN. So that is a tough question because, again, CBP, sir, as you well know, has so many interdependencies, both on HHS for the unaccompanied minors and then ICE for all the other demographics. It really does depend on how we come together to address this problem. If we are not going to have meaningful legis-

lative fixes and we are not going to fund ICE for beds, well, then I have a different solution. But if you are going to tell me that Congress is going to fund more bed space for ICE to include family residential centers, now we have a different proposal. That is the conundrum we are in right now. We say we are a police station and we say we are not a long-term holding facility, but we are somewhere in the middle. We are interim custody. We are not short term or long term, but a lot of it depends on what Congress is going to do.

Chairman JOHNSON. So alternative to detention sounds good, but isn't it true that an ankle bracelet on somebody who does not really have a permanent address, we do not know where they really came from, we do not know where they are really going, those are easily cutoff and that is basically what people do?

Mr. MORGAN. That is exactly right. Again, I do not want to speak for another agency, although I was there for a short period of time, but statistics will show that alternatives to detention, it is not productive, and it actually costs exponentially more per removal on the non-detained docket, on alternatives to detention, than it does to detain them. So financially it is also a challenge.

Chairman JOHNSON. I would call that "counterintuitive," but there is the reality.

You talked about funding. As a fiscal conservative, I was a leading proponent early on of providing government agencies with the funding they need to take care of the situation. On a telephone town hall last week, I realized that was not a real popular position. Again, very legitimate concerns on people on the call saying, "That is \$4.6 billion to close out the fiscal year. How better could we spend that money?" People need to understand the cost of apprehending, processing, and dispersing this overwhelming, out-of-control flow of illegal immigrants?

Mr. MORGAN. Yes, sir, and I think the American people need to understand, \$3.5 billion of that supplemental funding went to HHS for children, 300,000 this year. So what the supplemental did, and people need to understand, is it did not address the crisis at all. It did not stem the flow at all. What it did is it just improved our ability to more equitably and efficiently bring these kinds into the interior United States in a humane way.

Chairman JOHNSON. Again, that supplemental emergency spending does not cover the full fiscal year. It is not going to cover the costs for 2020. It just filled in the gap to address the situation.

So let us just very quickly, before I have to go vote, talk about really what the solution needs to be. First of all, what is the first goal of our policy? I would argue it is to reduce that flow. Would you both agree with that?

Mr. MORGAN. Absolutely.

Chairman JOHNSON. When I was down at the border, I talked to the Border Patrol and asked them, "What is the solution?" You get a pretty consistent answer: "We have to remove people that do not have a valid claim." And to be a consequence, to be a deterrent, so that others will not indebted themselves to human traffickers, will not mortgage their home, will not pay a year's worth of salary to these, let us face it, evil people. OK? Evil people.

We talk about the Feinstein amendment to the Trafficking Victims Protection Reauthorization Act (TVPRA), which creates a disparity in how we handle unaccompanied children. We cannot voluntarily return them in a safe situation to their—because we just cannot do that. We also talk about the *Flores* reinterpretation where—the *Flores* Settlement really applied to an unaccompanied child. I think her name was Jenny Flores?—back in 1985. It took a long time to come up with the settlement and how we handle unaccompanied children. Then in 2015, because of a lawsuit, the Obama Administration—and you were probably there—decided to detain children with their families, and a court said, no, the *Flores* standards apply to accompanied children as well.

If you take a look at our chart¹—it is not up there now—that is really the moment where this was really sparked, and once people realized if you came into America with a family unit, you are going to get to stay. Even though Deferred Action on Childhood Admissions (DACA) does not apply to any people in the future, that was used by coyotes to say we have changed our laws, come on it as an unaccompanied child or as a member of a family unit, you get to stay. And that has been the reality.

I would argue the thing that we really have to address is that gap between—in terms of our asylum laws—the credible fear standard, which lets people in the front door, takes them into this adjudication process where, I hear different numbers, but at least 800,000 backlogged cases in the immigration courts, correct?

Mr. MORGAN. Correct.

Chairman JOHNSON. I was told that we adjudicated last year a little more than 30,000 immigration cases of people coming in as family units from Central America, about 30,000. About 3,000 were granted asylum; the others were denied. So that is about a 10-percent rate.

There is a real problem when we let all these people in and only—and, again, nobody really knows the number here. We really do not know. But somewhere around 10, probably no more than 20 percent, actually had a valid asylum claim.

I would argue the law change—and it is going to require Congress to act. The law change has to close that gap, has to be to close that gap. Would you both agree with that?

Mr. MORGAN. 100 percent, Senator. You hit all three major elements that Congress must do to fix this crisis and stem the flow. It is a credible fear, as you just described. It is TVPRA where we treat kids different from Mexico and Canada than other countries, and the *Flores* Settlement Agreement which says we mandated we have to release unaccompanied minors and children within 20 days. Those are the three fixes.

Chairman JOHNSON. It is also true that we are releasing I think 79 percent of unaccompanied children to a person in the United States that is undocumented. Correct?

Mr. MORGAN. I do not know the specific stat, but that is happening every single day.

¹The chart referenced by Senator Johnson appears in the Appendix on page 485.

Chairman JOHNSON. We are only able to remove 70 percent of people that we do not detain. We just do not know where they are. Correct?

Mr. MORGAN. Sir, that is another reason why we want to detain, is on the non-detained docket it is extremely difficult, once these individuals have a final order of removal, to go and apprehend them.

Chairman JOHNSON. The solution is we have to look at that credible fear standard. We have to raise the bar on that initial hurdle. We need to squeeze all the inefficiencies out of that initial adjudication process so that we can, again, more rapidly, but I would argue more accurately and fairly—because we do not want to deny asylum to people who really qualify.

Mr. MORGAN. Sir, I would even say that by streamlining this process, as you just described, that is exactly what we will do, is that we will actually be able to more efficiently actually find those that have actual valid asylum claims and take care of them appropriately. Right now they are getting lost in the system with all the false and fraudulent claims.

Chairman JOHNSON. So that is the goal of this first step, Operation Safe Return. Again, I do not know what is going to happen with the safe third country. With Guatemala, I think they have to approve that through their legislature. Who knows what kind of court challenges both here and in Guatemala may occur? Operation Safe Return uses existing authorities—we have spoken with you and the other component heads within DHS—to implement that program, to start it, again, to rapidly and more accurately determine those individuals that clearly do not have a legal claim to stay and safely return. From my standpoint, that is what we are going to continue to work on. We have bipartisan support for that initiative. I just ask you to do everything you can to work with us on that, implement it, take a look at is it working, are we able to remove those individuals, to be a deterrent to reduce that flow. Assess how it is working, make adjustments, and move forward, and hopefully at some point in time we can get the bipartisan support to change our laws to actually fix this once and for all.

Anyway, I want to thank both of you for your service. I want to thank the men and women of DHS and Border Patrol and ICE, all of these individuals trying to cope with this out-of-control situation. I view them personally as heroes, and I hope they stay on the job. I hope they continue doing a good job, and I truly am grateful. I think this Committee is as well. I think you heard that voiced by most members. So if you will convey that back to your component, I would appreciate that.

Mr. MORGAN. I will. They absolutely are heroes, and I thank you for that, and I will make sure that they know that, Senator.

Chairman JOHNSON. Again, I am glad in your testimony you pointed out some of the heroic actions. We have heard other similar situations as well.

The hearing record will remain open for 15 days until August 14th at 5 p.m. for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 11:54 a.m., the Committee was adjourned.]

A P P E N D I X

Opening Statement of Chairman Ron Johnson
**"Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve
Conditions?"**
Tuesday, July 30, 2019

For more than a year and a half, officials at the Department of Homeland Security and throughout the Trump Administration have been warning that the migration crisis at our southern border is overwhelming our system. Their warnings have been blunt: children have been and continue to be at serious risk.

In the first nine months of fiscal year 2019, more than 454,000 family member units and unaccompanied alien children already have entered the United States and been apprehended at the southern border by Border Patrol. On average, Customs and Border Protection apprehended or deemed inadmissible 4,652 immigrants crossing our southern border per day in May of this year.

Given this flow, no one should be surprised that Border Patrol stations are well beyond their capacity. Border Patrol stations are simply not designed to hold families and children in custody, and certainly not at these numbers. They are police stations, built for the short-term detention of a small number of people, typically adult males. The way the system is supposed to work is that within 72 hours of apprehension, Border Patrol transfers unaccompanied alien children to Health and Human Services custody, and families to Immigration and Customs Enforcement custody. But because those facilities are also overwhelmed, CBP has had no choice but to care for migrants in their custody for longer periods of time while waiting for space to open up in other facilities.

On May 1st, the Trump Administration asked for an emergency DHS supplemental funding bill of \$4.6 billion to help care for children and families. It took Congress two months to approve the needed funds to care for these children. It is my understanding that within a couple of weeks of passage of the supplemental funding bill, Border Patrol reduced the number of unaccompanied children in its custody from 2,700 to approximately 300, with the average time in custody has decreased to around 30 hours.

In these difficult circumstances, the men and women of Border Patrol have worked tirelessly and acted valiantly to secure our border while also providing care for all migrants in their custody. Through June 2019, Border Patrol agents have rescued more than 3,400 people along the border. Of those saved, nearly 2,500 people were being smuggled in dangerously hot tractor-trailers. About 40 to 60 percent of Border Patrol agents' time is now spent caring for families and children. The committee has heard multiple stories of agents going above and beyond the call of duty to care for migrants. Border Patrol agents rock babies to sleep, make bottles and meals, play video games with children, and donate clothes and food to the migrants. I have seen it for myself on multiple trips to the border this year. These agents stand in stark contrast to the smugglers who profit handsomely from their illicit trade, yet all too often leave families and children in deadly situations.

Rather than point fingers at the brave men and women of DHS, who have done their best with the limited resources we have provided them, members of Congress should be acting on

legislation to solve the underlying problems. The Administration has been asking Congress for the resources and legal tools to solve this crisis for a long time, but effective legislation currently seems out of reach. However, as long as I am Chairman, this committee will continue to highlight the problem and tenaciously pursue common sense, nonpartisan solutions.

**U.S. Senate Committee on Homeland Security and Governmental Affairs
“Unprecedented Migration at the U.S. Southern Border: What Is Required to
Improve Conditions?”**

**OPENING STATEMENT OF RANKING MEMBER GARY C. PETERS
JULY 30, 2019
AS PREPARED FOR DELIVERY**

Earlier this year, I joined Chairman Johnson and Senator Hassan on a bipartisan Congressional delegation visit to the U.S.-Mexico border. On that trip, we saw firsthand the tremendous challenges Department of Homeland Security personnel and local communities face daily at our Southern border.

Our infrastructure and personnel are overwhelmed. Resources are stretched thin and being shifted away from other priorities like the Northern border. And our capacity to address the humanitarian needs of children and families is overburdened.

Despite those difficulties, we witnessed hardworking law enforcement officers, public servants, volunteers, and civic leaders doing their very best to manage an incredibly difficult situation.

At the same time, it is impossible to ignore the reports and images that have emerged regarding substandard conditions, unacceptable treatment, and tragic deaths of children at some Customs and Border Protection facilities.

And I am alarmed at the reports we have seen regarding unprofessional and unacceptable conduct from a small number of Border Patrol agents.

The situation at our Southern Border is incredibly challenging.

It is clear that our current system is not equipped to process and care for the unprecedented number of families and children seeking asylum at our Southern border.

The images we have seen and the stories we have heard do not reflect the overall efforts of Customs and Border Protection, the hardworking men and women who secure our borders. And they certainly do not reflect the values of this great nation.

But it is clear that there are significant challenges on the ground and, to some extent, problems within the agency’s culture that must be swiftly and appropriately addressed.

In recent weeks, we have seen a decline in the number of migrants arriving along our Southern border.

The pressure appears to be decreasing, at least temporarily. This drop has helped ease overcrowding at many border facilities.

Billions of dollars in supplemental funding has enabled DHS to improve their response to these challenges. And today I hope this committee will hear specifics on how these additional taxpayer dollars are being used.

However, as members of this Committee know, much of the migration that occurs from Mexico and the Northern Triangle countries is seasonal.

This fall, we can expect to see the number of arrivals rise again.

We now have an opportunity to examine where we have failed and where we have succeeded, and put lessons into practice for the future.

We need innovative ideas to improve migrant processing, to relieve the strain on our frontline border security professionals and other agencies that have provided support services in recent months, and to keep our borders secure and our country safe.

Few issues we face are as complex as this one. But today, I hope that we can find common ground, identify bipartisan solutions, and deliver real, comprehensive result for the American people.

I'd like to thank our witnesses for being here today. I look forward to your testimony.



TESTIMONY OF

Mark Morgan
Acting Commissioner
U.S. Customs and Border Protection

BEFORE

U.S. Senate
Committee on Homeland Security and Governmental Affairs

ON

“Unprecedented Migration at the U.S. Southern Border: What is Required to Improve Conditions?”

July 30, 2019
Washington, DC

Chairman Johnson, Ranking Member Peters, and Members of the Committee, thank you for the opportunity to discuss the conditions at the southwest border and the strain it has placed on our U.S. Customs and Border Protection (CBP) law enforcement resources. I am honored to speak on behalf of the men and women of CBP who are on the frontlines of our nation's border security and humanitarian crisis.

A Border Security and Humanitarian Crisis

From October 1, 2018 to June 30, 2019, the number of individuals apprehended or found inadmissible by CBP on the southwest border reached 780,633, an increase of 103 percent over the same time the previous fiscal year. That averages to two apprehensions or findings of inadmissibility every minute of every day for 272 days. Border Patrol's southwest border apprehensions reached 688,375 for FY 2019 by the end of June. That number represents more apprehensions than full fiscal year totals for the previous ten years. Although we saw a decrease in the levels of apprehensions in June of this year compared to previous months, irregular migration remains high, continues to overtax our finite law enforcement resources, and detracts from our national security mission.

We have seen a series of demographic changes along the southwest border in recent years. The vast majority of migrants are Central American family units and unaccompanied alien children (UAC). In FY 2019 to date, UAC and family units represent 66 percent of all individuals apprehended by the Border Patrol at the southwest border.

The majority of individuals encountered now originate from the three countries of Central America known as the Northern Triangle: Guatemala, Honduras, and El Salvador. The number of Northern Triangle migrants exceeded the number of Mexican migrants in four of the past five fiscal years, and in June 2019, 70 percent of all southwest border apprehensions came from the Northern Triangle. Unlike single adult migrants from Mexico, UAC from Central America cannot be swiftly repatriated.

Exacerbating these challenges, the U.S. Border Patrol is now apprehending large groups between ports of entry; 198 large groups of migrants, each comprising over 100 members (primarily Guatemalan and Honduran families), have been apprehended between ports of entry so far this fiscal year. Last month, Border Patrol reached an unfortunate record when more than 1,000 migrants illegally entered the United States in the largest single group ever encountered. The group included more than 900 people in family units and more than 60 UAC.

Each day, we see the cascading effects of mass migration both at and between our ports of entry (POEs). The increased shift to these more vulnerable migrant populations, combined with the overwhelming numbers, profoundly affects our ability to patrol the border and diminishes our ability to reduce risk at the border by interdicting deadly narcotics and dangerous people. It also detracts from our ability to facilitate lawful trade and travel.

Similar to what we see *between* POEs, CBP is experiencing increased numbers of migrants at POEs, including family units and other aliens who arrive without documents sufficient for lawful entry. Large groups of inadmissible aliens, sometimes in the hundreds, arriving at POEs also

strain our processes and divert our officers from their priority missions, as our officers necessarily and rightly shift their focus to processing these migrants in a humane and efficient manner.

In high-flow sectors, Border Patrol has been forced to divert between 40 and 60 percent of its manpower away from the border security mission to provide humanitarian care to families and children. Further, this crisis has depleted detention capacity of U.S. Immigration and Customs Enforcement (ICE) and greatly overwhelmed its resources.

To help the Border Patrol with processing this unprecedented number of migrants, CBP has temporarily shifted more than 700 CBP Officers from POEs to Border Patrol stations between the ports. Fewer officers at POEs means that pedestrians, passenger vehicles, and commercial trucks trying to cross the border may experience delays. Some POEs have been forced to close travel lanes and curtail weekend cargo processing hours, all affecting the flow of commerce and travel in the United States.

In addition, the influx of family units and UAC has led to CBP facilities operating at unprecedented and unsustainable occupancy levels. Short-term holding facilities at POEs and Border Patrol stations were designed neither for the large volume of inadmissible persons and apprehensions nor the long-term custody after processing is complete. CBP's ability to transfer people out of its custody is dependent upon the capacity of our partners. Other agencies have more time than CBP to arrange placement before individuals enter their custody, and immigration courts can spread their dockets out over years. However, CBP must process individuals as they are apprehended, and must maintain custody until our partners can accept them. By way of reference, we generally consider 4,000 detainees to be a high number of migrants in custody, and consider 6,000 detainees to be a crisis level. On any given day for the past several months, CBP has held more than 8,000 detainees in custody. On June 3, the number was as high as 19,500 detainees.

Addressing Crowding in CBP Facilities

CBP short-term holding facilities were simply not set up to process and care for a population of this size and demographics. The resulting effect is often a delay in CBP's ability to promptly process, transfer, transport, release, or repatriate those in our custody. Unfortunately, this means that in some cases aliens are being held in our facilities for longer than the short period of time necessary to complete immigration processing. Holding more aliens in custody takes a toll on CBP facilities, necessitating almost continual repair and replacement of holding facilities and related infrastructure. The situation also strains CBP's ability to manage short-term holding operations. For example, we must now accommodate additional hygiene needs beyond what was generally expected when aliens were in our custody for mere hours, a requirement that seems simple enough to meet, but poses a difficult logistical problem given the size of the population in custody and its geographical distribution.

As we continue to review all appropriate options to relieve crowding in CBP facilities, CBP has taken a number of proactive measures. CBP has established soft-sided structures near high-volume locations in Donna and El Paso, Texas, and Yuma, Arizona, to add capacity and alleviate

current crowding at stations. The temporary structures are weatherproof, climate-controlled, and provide areas for eating, sleeping, recreation, and personal hygiene. These facilities include shower trailers, chemical toilets and sinks, laundry trailers, sleeping mats, personal property storage boxes, lockers, kitchen equipment, food and water, and clothing and hygiene kits. CBP has also begun transporting medically-screened, partially-processed family units via air and ground transportation to complete processing at other southwest border locations with additional capacity.

Working closely with our partners, CBP continues to reduce the number of individuals in our custody. While this has significantly reduced overcrowding in our facilities, the need to transfer individuals more quickly to our partners remains of great concern.

We Need Congress to Act

Families are coming to our border now because, in addition to push factors, they know that the Department of Homeland Security (DHS) must release them quickly—generally within 20 days—and that they will be allowed to stay in the United States indefinitely while awaiting inevitably protracted immigration court proceedings. To be clear, these families, and those posing as families, are generally not concerned with being caught by the Border Patrol—they are actually turning themselves in, knowing that they will be processed and released with a court date years in the future, often times with permission to work while their case is pending. Smugglers are exploiting this dynamic to encourage more migration and are benefiting from it financially every day under the current outdated laws that are encouraging this to occur.

The perception that our system will allow families to stay in the United States indefinitely is clearly a major pull factor used by smugglers to convince migrants to journey to our border.

Along with important push factors, which include high levels of insecurity, limited economic opportunity, and weak governance in many parts of Central America, this perception about our immigration system incentivizes migrants to put their lives in the hands of smugglers and make the dangerous trek north to our southwest border. We see the cost of these pull and push factors every day in profits derived by transnational criminal organizations, in the lives lost along the journey, and in the flight of generations of youth from the countries of the Northern Triangle.

We have dedicated every available resource to address the mass migration to our borders, including personnel, technology, and innovative outreach and engagement with international and non-governmental industry partners. However, despite our efforts, the system is overwhelmed.

Oversight of CBP and Standards of Conduct

I would like to address certain recent allegations about members of the CBP workforce and discuss the layered, robust and comprehensive oversight system by which we hold our workforce accountable.

CBP takes allegations of employee misconduct very seriously, and has instituted policies pertaining to abuses of authority. Complaints of unprofessional conduct are recorded, investigated, and appropriate action is taken against CBP employees that are found to have

violated policy. Further, CBP's Standards of Conduct, Directive No. 51735-013A, discusses ethics and standards of conduct policies of CBP. Paragraph 6.11.2 provides that employees "will not make abusive, derisive, profane, or harassing statements or gestures, or engage in any other conduct evidencing hatred or invidious prejudice to or about one person or group on account of race, color, religion, national origin, sex, sexual orientation, age, or disability."

Internal oversight is provided through the CBP Office of Professional Responsibility (OPR), the Office of Accountability's Management Inspection Division; and the CBP Juvenile Coordinator.

Externally, CBP is subject to numerous distinct oversight, investigation, and monitoring bodies, including the U.S. Congress; the Government Accountability Office; the DHS Office of Inspector General (OIG); the DHS Office for Civil Rights and Civil Liberties (CRCL); third-party auditors who assess compliance with the DHS Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities; and the courts.

We work closely with investigators and overseers conducting dozens of reviews and audits, and hundreds of site visits each year. CBP's Juvenile Coordinator also monitors CBP's compliance with the terms of the *Flores* Settlement Agreement and CBP's Coordinator for the Prevention of Sexual Assault oversees CBP's efforts to comply with Subpart B of the DHS Standards in all CBP holding facilities.

Social Media Investigation

On Monday, July 1, 2019, OPR's Joint Intake Center (JIC) was alerted to a media report (ProPublica) regarding offensive postings in a private Facebook group called "I'm 10-15." We must also note that, on that same date, while reviewing these initial allegations, our intake team processed a Friday, June 28, 2019, allegation wherein a CBP employee reported the offensive postings by one of the members of the "I'm 10-15" group. Every CBP employee is required to report allegations of misconduct as this employee did. Failing to report misconduct in and of itself is misconduct.

OPR has opened an investigation and served preservation notices on Facebook. As of July 17, 2019, OPR has identified 72 individuals, 64 of whom are current employees and 8 whom are former employees. However, the number of cases will likely continue to grow as OPR receives additional information, performs further research, and conducts interviews.

The majority of employees who have been positively identified at this time have received "cease and desist" letters, and several have been placed on administrative duties pending the results of the investigation.

Cases that involve posts within private social media groups are challenging for many reasons. But to be clear, CBP has set standards of conduct that prohibit the types of posts we saw in these private groups, and CBP has made it clear to employees that messages posted on a private social media page that are discriminatory, harassing, or offensive could result in disciplinary action.

The posts do not reflect the core values of CBP and do not reflect the vast majority of employees who conduct themselves professionally and honorably every day, on and off duty.

Conclusion

We appreciate the continuous and constructive engagement we have had with Congress throughout the crisis on the southwest border. While we continue to discuss the best approach to remedy the crisis and what represents the most effective and efficient way to ensure safe and sanitary conditions, we must also address the factors that continue to drive mass illegal migration. We ask Congress to acknowledge the crisis and help us by taking legislative action in support of CBP, our partners and the rule of law.

OFFICE OF INSPECTOR GENERAL

**Testimony of Acting Inspector
General Jennifer L. Costello**

**Before the Committee on
Homeland Security and
Governmental Affairs**

United States Senate

**"Unprecedented Migration at the
U.S. Southern Border: What is
Required to Improve Conditions?"**



Homeland
Security

**July 30, 2019
10:00 AM**



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Chairman Johnson, Ranking Member Peters, and members of the Committee, thank you for inviting me today to discuss family separation and short-term custody in U.S. Customs and Border Protection (CBP) holding facilities and ports of entry. My testimony today will focus on our two recent Management Alerts regarding conditions at CBP facilities: [DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center \(OIG-19-46\)](#) and [DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley \(OIG-19-51\)](#). These alerts describe conditions that we observed on May 7 and 8, 2019, and June 10 through 12, 2019, respectively.

We issued two recent Management Alerts because in the course of our review we identified issues that posed a serious, imminent threat to the health and safety of CBP personnel and detainees requiring immediate action by the Department. Management Alerts are a unique product issued by DHS OIG in relatively rare circumstances in which we identify an issue so serious that we deem it necessary to report on the issue before completing our standard inspection or review process. In such instances, we prepare a "Management Alert" to notify the Department of the issue so it can take immediate action to mitigate and/or correct the situation. Often, because we have not completed our standard inspection or review process at the time we issue a Management Alert on a particular issue, we are not yet in a position to offer recommendations for corrective action.

While DHS OIG generally strives to improve the efficiency and effectiveness of DHS programs and operations through concrete, implementable recommendations, Management Alerts present a unique situation in which we may not be able to do so given the nature and urgency of the issue(s) uncovered. The dangerous overcrowding and prolonged detention we observed on our recent unannounced visits to CBP facilities on the southern border presented just such a situation.

Background on Unannounced Inspections and Past Work

DHS Office of Inspector General (OIG) initiated our unannounced inspection program in response to concerns raised by Congress about conditions for aliens in CBP custody. Our unannounced inspections of CBP holding facilities evaluate compliance with CBP's National Standards on Transport, Escort, Detention and Search (TEDS)¹, which govern CBP's interaction with detained individuals. Our inspections also determine whether CBP provides reasonable care from apprehension to holding. During our visits to ports of entry and Border Patrol facilities, we focus on elements of the TEDS standards that can

¹ [U.S. Customs and Border Protection, National Standards on Transport, Escort, Detention, and Search, October 2015.](#)



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

be observed and evaluated by OIG inspectors without specialized law enforcement or medical training. We inspect CBP's compliance with standards such as whether adequate drinking water, food, blankets, and hygiene supplies are being provided to detainees. We also review how long detainees have been in custody and whether unaccompanied alien children (UACs) are given access to telephones to call relatives or their consulates.

CBP Office of Field Operations ports of entry, Border Patrol stations, and processing centers are intended solely for short-term detention. In fact, TEDS standards provide that “[d]etainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities. Every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible.” Additional legal protections are in place for children DHS deems to be UACs, who by law should be transferred to Health and Human Services (HHS) Office of Refugee Resettlement (ORR) within 72 hours.² The TEDS standards also outline protocols for CBP on how to treat vulnerable populations, defined as “at risk” by CBP, such as UACs, families and pregnant, elderly, or disabled detainees, and specify requirements for general care and conditions for such vulnerable populations in temporary custody. While ICE is responsible for providing long-term detention, TEDS standards require that CBP provide safe and sanitary short-term holding facilities for all detainees.

In the past, when we had reviewed CBP holding facilities, conditions were generally compliant with existing hold-room policies. However, starting in 2014 with the influx of UACs in CBP custody, DHS has struggled with compliance with certain *Flores* Agreement provisions, such as holding children no longer than 72 hours. This generally continued to be the case in 2018, during which implementation of the Administration’s Zero Tolerance Policy was followed by an increase in the number of individuals held in CBP custody for longer than 72 hours.³

² The *Flores* Agreement generally permits detention of minors no longer than 72 hours, with a provision that in an influx of minors, placement should be as expeditious as possible. In addition, the *Trafficking Victims Protection Reauthorization Act of 2008* requires DHS to meet this timeline unless there are “exceptional circumstances.” 8 U.S.C. § 1232(b)(3). The *Flores* Agreement also includes a requirement that immigration officials hold minors immediately following arrest in facilities that provide: (1) access to food and drinking water; (2) medical assistance in the event of emergencies; (3) toilets and sinks; (4) adequate temperature control and ventilation; (5) adequate supervision to protect minors from others; (6) separation from unrelated adults whenever possible; and (7) contact with family members who were arrested with the minor.

³ [*Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy, OIG-18-84, September 27, 2018; Results of Unannounced Inspections of Conditions for Unaccompanied Alien Children in CBP Custody, OIG-18-87, September 28, 2018.*](#)
The CBP facilities we inspected between June 26 and June 28, 2018 appeared to be operating



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Our more recent unannounced inspections reveal a worsening situation, which the Department has characterized as “an acute and worsening crisis.” Specifically, in May and June of this year, we observed dangerous overcrowding and prolonged detention in CBP facilities in both El Paso and the Rio Grande Valley. We also documented instances of non-compliance with TEDS standards, including lack of access to hot meals and showers for minors. The conditions we observed, which put the health and safety of both DHS personnel and detainees at risk, prompted us to publish two Management Alerts raising the issues to the attention of DHS leadership and requesting immediate action.

Overcrowding and Prolonged Detention Have Resulted in Non-Compliance with TEDS Standards

Early in May 2019, our inspectors conducted spot inspections of five Border Patrol stations and two ports of entry in the El Paso area. One month later in June 2019, our inspectors conducted spot inspections of five Border Patrol facilities and two ports of entry in the Rio Grande Valley. In both instances, we observed dangerous overcrowding and prolonged detention at Border Patrol facilities resulting in non-compliance with TEDS standards.

We chose these locations based on a review of CBP statistics on apprehensions, complaints received by the OIG hotline, unannounced inspections from previous years, and consultation with our investigators who work in OIG field offices on the southern border and are familiar with conditions in the facilities. According to CBP data, the El Paso sector experienced the sharpest increase in apprehensions – 619 percent⁴ comparing the first seven months of FY 2019 to the same period in FY 2018. The Rio Grande Valley Sector had the highest overall volume of apprehensions⁵ on the southwest border, with nearly a quarter million apprehensions in the first eight months of FY 2019.

Overcrowding and Prolonged Detention of Single Adults at El Paso Del Norte Processing Center

During the week of May 6, 2019, we observed dangerous holding conditions at the El Paso Del Norte Processing Center (PDT) Border Patrol processing facility, located at the Paso Del Norte Bridge. Despite having a maximum capacity of 125 detainees, CBP custody logs indicated that approximately 750 detainees were on-site on May 7 and 900 detainees were on-site on May 8. Although the

in compliance with the 2015 TEDS standards we evaluated; however, we determined that CBP exceeded the 72-hour period in many instances during our fieldwork.

⁴ This represents an increase in apprehensions of 82% of single adults, 347% of UACs, and 1,816% of family units.

⁵ This represents an increase in apprehensions of 32% of single adults, 62% of UACs, and 269% of family units.



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majority of these detainees were held in outdoor space for processing and transfer, many of those inside the facility were held in severely overcrowded cells. TEDS standards provide that “under no circumstances should the maximum [cell] occupancy rate, as set by the fire marshal, be exceeded.” Yet, at the facility, single adults were being held in cells designed for one-fifth as many detainees. Specifically, we observed:

- a cell with a maximum capacity of 12 held 76 detainees;
- a cell with a maximum capacity of 8 held 41 detainees; and
- a cell with a maximum capacity of 35 held 155 detainees.

Border Patrol agents also told our inspectors that some of the detainees had been held in standing-room-only conditions for days or even weeks. The Border Patrol’s custody logs confirmed this prolonged detention. When we visited PDT on May 7, of the total 756 detainees on-site during our visit, 66 percent of detainees had been held for longer than the 72 hours generally permitted under TEDS standards, with 4 percent held for more than two weeks. When we returned to PDT for another unannounced inspection the next day, we observed that, while some family units and adult females had been transferred the day before, additional detainees had arrived for processing, increasing the total number of detainees on-site to approximately 900.

“At-Risk” Populations are Subject to Overcrowding and Prolonged Detention in Border Patrol Facilities in the Rio Grande Valley Sector, Resulting in Non-Compliance with Applicable Standards

During the week of June 10, 2019, we traveled to the Rio Grande Valley in Texas and we observed serious overcrowding at four of the five Border Patrol facilities and prolonged detention at all five facilities. At the time of our visit, Border Patrol was holding about 8,000 detainees in custody in the Rio Grande Valley sector, with 3,400 held longer than the permitted 72 hours. Of those 3,400 detainees, Border Patrol held 1,500 for more than 10 days. With respect to UACs and families – populations defined as “at-risk” in TEDS standards – Border Patrol’s custody data indicated that 826 (31 percent) of the 2,669 children at these facilities had been held longer than the 72 hours generally permitted under the TEDS standards and the *Flores Agreement*. For example, at the Centralized Processing Center in McAllen, TX, of the 806 UACs who had already been processed and were awaiting transfer to HHS custody, 165 had been in CBP custody longer than a week. Additionally, there were more than 50 UACs younger than 7 years old, and some of them had been in custody more than two weeks while awaiting transfer.

In addition to holding roughly 30 percent of minor detainees for longer than 72 hours, several Rio Grande Valley facilities struggled to meet other TEDS standards for UACs and families. For example, children at three of the five



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Border Patrol facilities we visited had no access to showers, despite the TEDS standards requiring that “reasonable efforts” be made to provide showers to children approaching 48 hours in detention. Children had limited access to a change of clothes as Border Patrol had few spare clothes and no laundry facilities. While all facilities had infant formula, diapers, baby wipes, and juice and snacks for children, we observed that two facilities had not provided children access to hot meals – as is required by the TEDS standards – until the week we arrived.

Overcrowding and Prolonged Detention for Adults in the Rio Grande Valley Sector Resulted in Non-Compliance with TEDS Standards

The conditions in the Rio Grande Valley for single adults were similar to those faced by detainees in the El Paso facility. Detainees were also held in cells that exceeded maximum occupancy rates, resulting in non-compliance with TEDS standards. Overcrowding at one facility led to some single adults being held in standing room only conditions for a week and, at another facility, some single adults were held more than a month in overcrowded cells.

CBP was also unable to meet TEDS standards that require CBP to make a reasonable effort to provide a shower for adults after 72 hours; most single adults had not had a shower in CBP custody despite several being held for as long as a month. At some facilities, Border Patrol was giving detainees wet-wipes to maintain personal hygiene. Most single adult detainees were wearing the clothes they arrived in days, weeks, and even up to a month prior.

Overcrowding and Prolonged Detention Puts DHS Personnel and Detainees at Health and Safety at Risk

We are concerned that the overcrowding and prolonged detention we observed in the El Paso and Rio Grande Valley sectors represent an immediate risk to the health and safety of DHS agents and officers, and to those detained.

Overcrowding and Prolonged Detention Exacerbate Health and Safety Risks in El Paso Sector

During our May visits at PDT, we observed approximately 75 people being treated for lice and some detainees were in isolation with flu, chicken pox, and scabies. When the detainees in line waiting to be processed had to surrender their valuables, such as money and phones, to DHS staff, we observed DHS staff discarding all other detainee property, such as backpacks, suitcases, and handbags, in the nearby dumpster. Border Patrol personnel told us that these items might be wet, have bugs, and be muddy, and therefore, presented a “biohazard.” Border Patrol management at PDT and other facilities also raised concerns about the high incidence of illness among their staff, concerns about



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employee morale, and conditions that were elevating anxiety and affecting employees' personal lives.

CBP was also struggling to maintain hygienic conditions in the holding cells. With limited access to showers and clean clothing, detainees were wearing soiled clothing for days or weeks. While TEDS standards do not require a change of clothing for adults, Border Patrol agents said they were nevertheless trying to obtain clean clothing for adult females because the lack of clean clothes was "wearing down on them." Access to toilets was limited, because overcrowding caused detainees to stand on toilets in cells to make room and gain breathing space. Border Patrol agents said detainees who were not ill were raising medical complaints simply to obtain temporary release from the cells, adding to the medical staff's burden.

Border Patrol management at PDT also described an ongoing concern that rising tensions among detainees could turn violent. At the time of our visit, 140 adult male detainees were crowding the hallways and common areas of the facility while their cell was being cleaned. We observed staff having difficulty maneuvering around this crowd to perform their duties, and were told that staff feel they have limited options if detainees decide not to cooperate.

Overcrowding and Prolonged Detention of Single Adults Have Resulted in Security Incidents in Rio Grande Valley Sector

The security incidents in the Rio Grande Valley facilities reflect an escalation of the security concerns we raised in our El Paso report. We were informed of multiple security incidents among adult males at multiple facilities. Incidents arise when detainees are moved from their cells for servicing and maintenance. At one facility, when detainees who had been moved from their cells during cleaning refused to return, Border Patrol brought in its special operations team to demonstrate it was prepared to use force if necessary. Additionally, detainees have attempted to escape while removed from their cells during maintenance. Detainees at one overcrowded facility had clogged the toilets with Mylar blankets and socks in order to be released from their cells while the toilets were repaired.

Senior managers at several facilities raised security concerns for their agents and the detainees. One senior manager described the situation as "a ticking time bomb." We had to end our site visit at one Border Patrol facility early because we noticed that our presence was agitating an already difficult situation. Specifically, when detainees observed us, they banged on the cell windows, shouted, pressed notes to the window with their time in custody, and pointed to the evidence of their time in custody, such as their beards.



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**Department of Homeland Security Needs a Plan to Eliminate
Overcrowding**

We recognize the extraordinary challenge CBP is currently facing to eliminate overcrowding. However, we remain concerned that DHS is not taking sufficient measures to address the issues outlined in our recent Management Alerts, particularly with respect to single adult detainees.

In our May 2019 Management Alert on conditions in the PDT facility, we recommended that CBP take immediate steps to alleviate the overcrowding there. CBP concurred with our recommendation and reported that they have constructed a 500-person soft-sided structure at El Paso Station and plan to construct an additional tent by July 31, 2019. CBP also plans to open a new Centralized Processing Center with an estimated completion date of November 30, 2020. While additional tents may reduce some of the overcrowding, we were concerned that CBP's plan would not eliminate the immediate risk to the health and safety of detainees and DHS employees, particularly the prolonged severe overcrowding of single adults, which can lead to outbreaks of communicable diseases and violence. Thus, the recommendation will remain unresolved and open until DHS offers an immediate corrective action plan to address the dangerous overcrowding.

In response to our July 2019 report on the conditions in the Rio Grande Valley sector, DHS cited measures it has taken to expand CBP's capacity on the southern border. DHS continues to add tents capable of holding 500 people and plans to add more tents to house single adults by July 29, 2019. Again, while additional tents may reduce overcrowding, we remain concerned that DHS is not taking sufficient measures to address prolonged detention in CBP custody, particularly among single adults.

We continue to encourage the Department to take immediate steps to alleviate dangerous overcrowding and prolonged detention of children and adults at CBP facilities. We hope that leadership across the Department will work together to develop a strategic, coordinated plan to address these conditions and alleviate the pressure currently affecting CBP operations.

Ongoing OIG Oversight

Our office will continue to help the Department meet its critical mission through independent and objective audits, inspections, and investigations. We plan to publish several DHS-wide reports this year and next year that will include reviews of CBP and ICE, including:

- DHS Tracking of Detainees to Support Migrant Family Reunification: We initiated a full-scale audit looking at the effectiveness of DHS' IT systems



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for tracking and supporting efforts to reunify UACs with separated families. Our audit will determine whether the IT systems and processes DHS relied upon were adequate to carry out specific border security operations, including tracking separated families, prior to and following the implementation of the Zero Tolerance Policy.

- **CBP's Processing of Asylum Seekers:** We are reviewing CBP's handling of asylum seekers at ports of entry. The objective of this work is to determine whether CBP Office of Field Operations is turning away those who present themselves as asylum at ports of entry. As part of its ongoing fieldwork, the team travelled to ports of entry in Texas, Arizona, and California, where it observed operations, gathered documents, and interviewed CBP officers, representatives of non-governmental organizations, and asylum seekers.
- **Update on Family Separations:** Our review will determine whether CBP was separating families seeking asylum at ports of entry during and after the Zero Tolerance Policy and documenting those separations appropriately.
- **Review of Removal of Separated Alien Families:** Our work will determine whether ICE removed any parents without first offering them the opportunity to bring their separated children with them. The review will identify why this may have happened and how many separated parents may have been removed without having that option.
- **72-hour CBP Custody Snapshot:** Working in partnership with our Data Analytics group, we will try to determine the populations of detainees held in CBP facilities for longer than 72 hours, the total time in custody from apprehension to transfer or release, and where such holds occur most frequently.
- **CBP's Holding of Detainees Beyond 72 Hours:** This larger-scale evaluation's objective is to determine the factors impacting CBP's ability to comply with the general requirement to only hold detainees in its custody for up to 72 hours. CBP, ICE, and HHS all have responsibility for assuming custody of specific groups of detainees in various stages of the immigration proceedings. We will try to identify the primary DHS factors driving the delays in placement, and make recommendations to mitigate those issues.
- **CBP's Use of FY 2019 Appropriated Funds for Humanitarian Assistance:** Our objective is to determine whether CBP has adequately planned for



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deployment, and is deploying, FY 2019 appropriated funds quickly and effectively to address the humanitarian needs on the southern border.

- Unannounced Inspections of CBP Holding Facilities & ICE Adult Detention Facilities: Our objective is to continue conducting ongoing unannounced inspections of DHS and contract facilities to monitor DHS compliance with health, safety, and civil rights standards outlined in CBP's National Standards on Transport, Escort, Detention, and Search; and ICE's Performance-Based National Detention Standards.

Conclusion

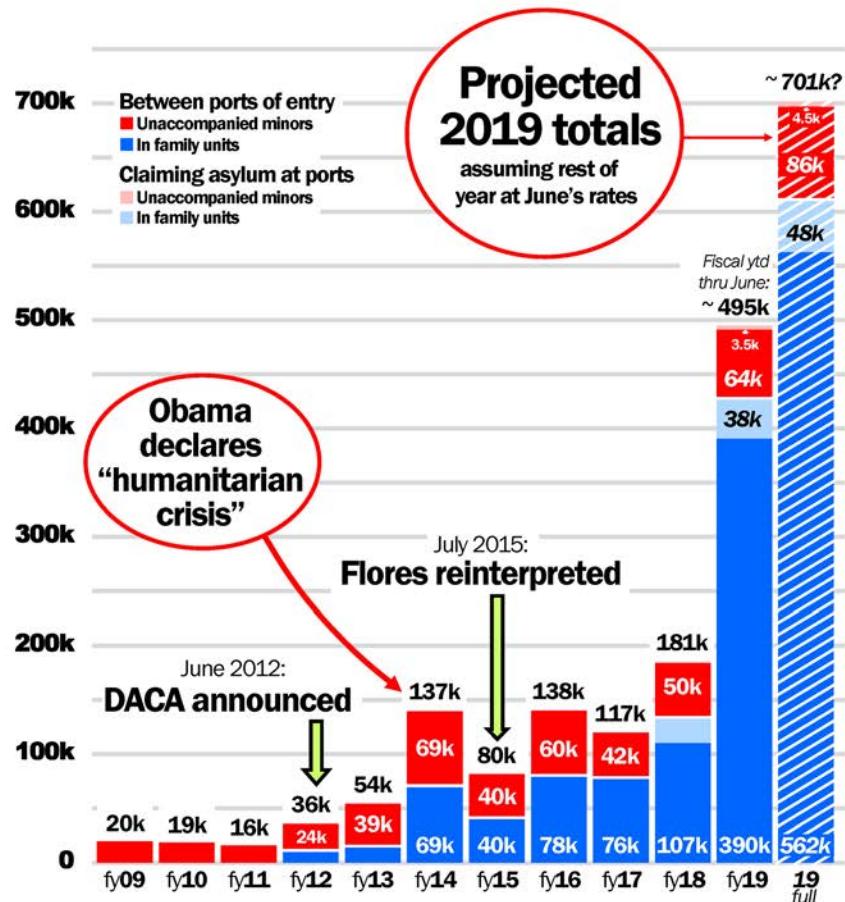
We understand that the Department is facing a difficult challenge; however, the Department has not developed a long-term plan to address the issues within detention centers along the southern border. The steps the Department has taken to implement our recommendation to alleviate dangerous overcrowding continue to fall short. For instance, the Department's proposal to address overcrowding at PDT by November 2020 was inconsistent with the immediate need for corrective action; accordingly, we consider the recommendation open and unresolved.

DHS OIG will continue to exercise diligent oversight over immigration enforcement, paying particular attention to the Department's progress in reducing overcrowding and prolonged detention at CBP facilities. Consistent with our obligations under the *Inspector General Act of 1978*, we will keep Congress fully and currently informed of our findings and recommendations.

Mr. Chairman, this concludes my testimony. I am happy to answer any questions you or other members of the Committee may have.

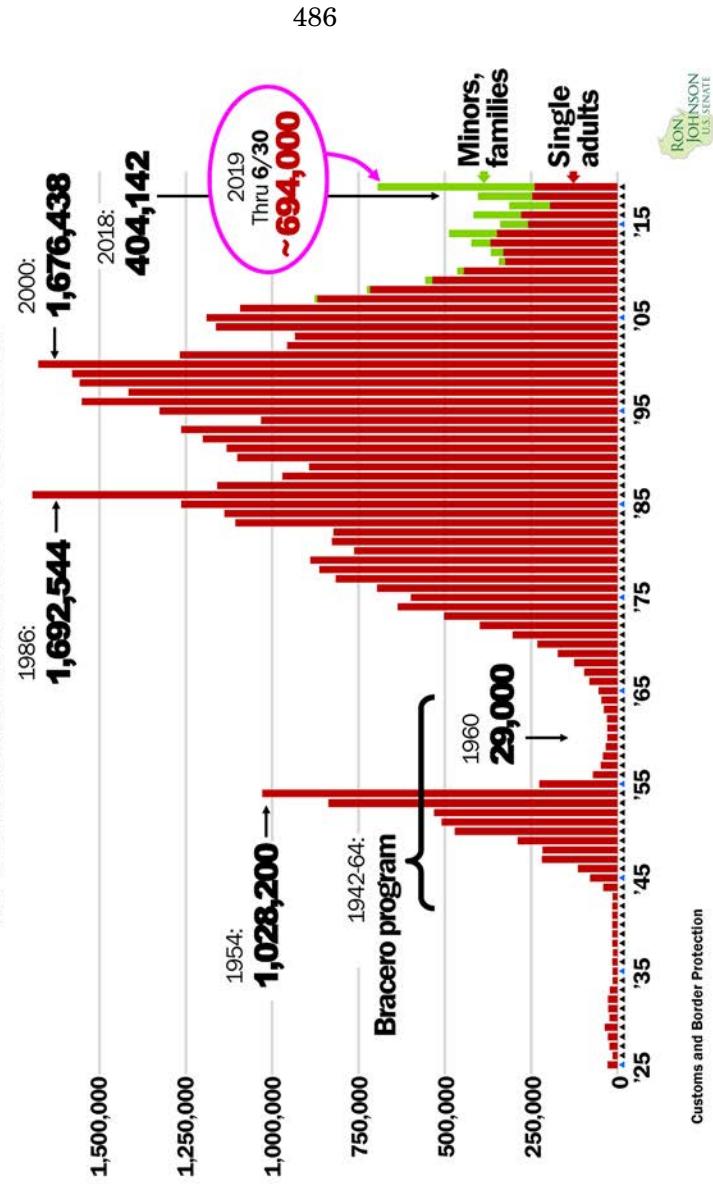
MINORS AND FAMILIES

APPREHENDED AT S.W. BORDER OR CLAIMING ASYLUM AT PORTS



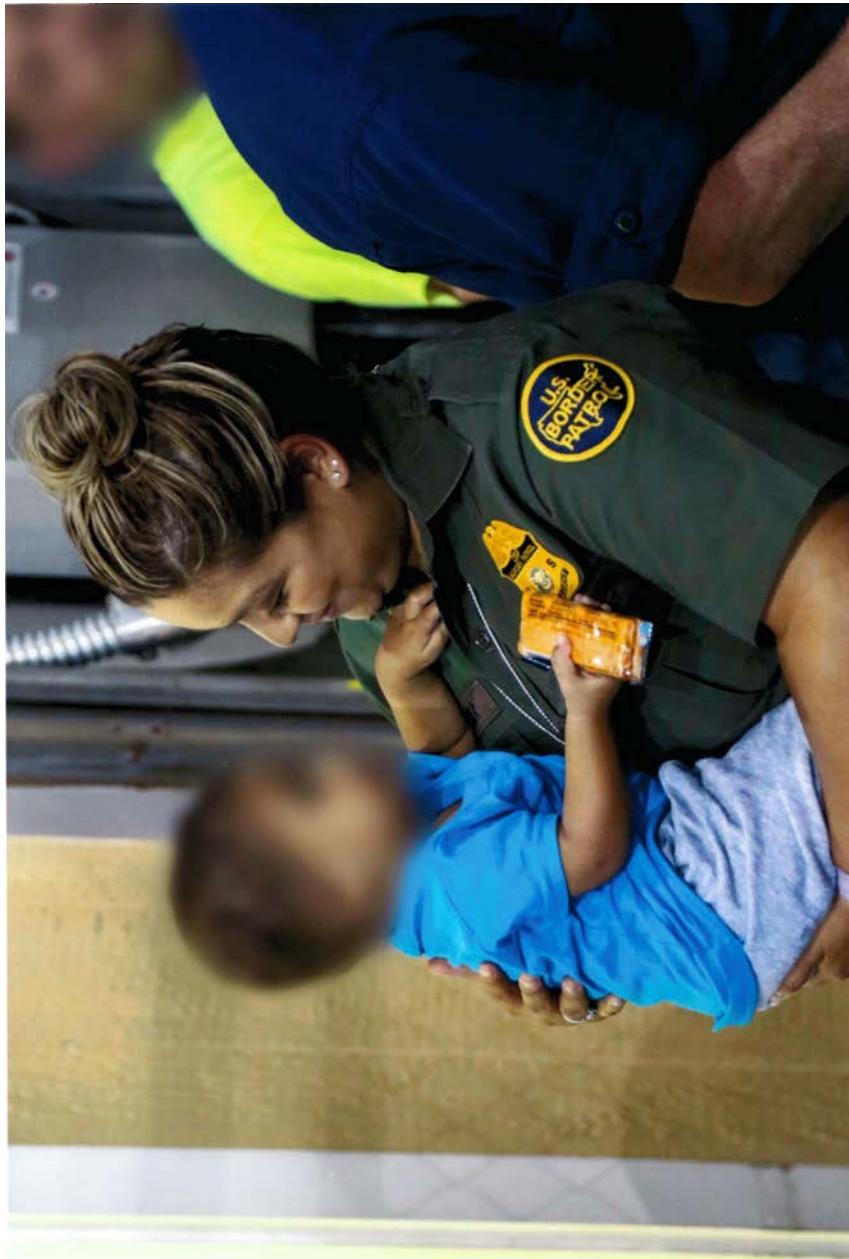
ILLEGAL IMMIGRANT ARRESTS

APPREHENSIONS NATIONWIDE BY FISCAL YEAR



1. A U.S. Customs and Border Protection supervisory CBP officer based in Brownsville, Texas, assists in the rescue of a child that had been pinned in a strong current in the Rio Grande river near the Gateway International Bridge. July 21, 2019.
2. A U.S. Border patrol agent holds a migrant child at the U.S. Customs and Border Protection Central Processing Facility in Donna, Texas. On Wednesday, July 17, 2019, McAllen agents encountered a group of 12 individuals, comprised of family units and unaccompanied children who turned themselves in. During record checks, one of the subjects traveling with his alleged son, revealed two previous immigration arrests in the El Paso Sector just in the past month. Given the recent apprehensions and the age of the child the man was travelling with, agents requested the assistance of Homeland Security Investigations to administer a rapid DNA test. The test revealed there is no parent-child relationship. After confronting the man with the information, the man admitted he was not the child's father, but knew the mother and had permission to take the child. Additionally, the man admitted that it is common knowledge in Honduras that if you bring a child, you will be released. Photo taken July 19, 2019.
3. A U.S. Border Patrol Search, Trauma, and Rescue (BORSTAR) team member assesses the condition of a migrant child in CBP custody. On June 2, Laredo Sector began a rescue operation utilizing BORSTAR to address individuals that become distressed in the area. Through July 24, BORSTAR agents, as part of the rescue op, have responded to 55 emergency calls, rescued 66 individuals and discovered nine individuals who had died while attempting to cross the border.
4. U.S. Border Patrol agents from Eagle Pass Station rescue two individuals, a woman and her 19-year old special needs son from Honduras, hidden in the deep cane along the banks of the Rio Grande River. June 27, 2019.
5. A U.S. Border Patrol Search, Trauma, and Rescue (BORSTAR) team member assesses the condition of an individual in CBP custody. On June 2, Laredo Sector began a rescue operation utilizing BORSTAR to address individuals that become distressed in the area. Through July 24, BORSTAR agents, as part of the rescue op, have responded to 55 emergency calls, rescued 66 individuals and discovered nine individuals who had died while attempting to cross the border.
6. Migrant children detained at the U.S. Customs and Border Protection Central Processing Facility in Donna, Texas, watch a movie. July 26, 2019.
7. Supplies provided to care for individuals in CBP custody await distribution at the U.S. Customs and Border Protection Central Processing Facility in Donna, Texas. June 26, 2019.





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CWS Statement to the U.S. Senate Committee on Homeland Security and Governmental Affairs, pertaining to its hearing "Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?" on Tuesday, July 30, 2019

As a 73-year old humanitarian organization representing 37 Protestant, Anglican, and Orthodox communions and 25 refugee resettlement offices across 17 states, Church World Service (CWS) urges Congress to recognize the importance of providing children access to life-saving protection and humane treatment at the border. Individuals seeking safety within the region and in the United States have clear and compelling protection concerns and the United States has moral and legal obligations under international and U.S. law to see that individuals seeking protection are not returned back into the hands of traffickers and others who seek to exploit them.

CWS is outraged to hear that administration officials have proposed setting the Presidential Determination on refugee admissions at zero in FY 2020, which would destroy thousands of people's lives who we have promised to protect, including those who the United States has already approved. Congress must hold the administration accountable to consult with Congress prior to setting the refugee admissions goal, to stop its attacks on asylum seekers, and to commit to resettling 95,000 refugees in 2020. **Congress must do its constitutional duty and demand that the U.S. once again be a beacon of hope for refugees.**

CWS is strongly opposed to immigrant and family detention and any proposal that would undermine Flores protections. Detention in DHS custody is plagued with systemic abuse and inadequate access to medical care. Numerous reports have revealed the systemic human rights abuses, sexual assaults, and dehumanizing conditions that exist in the detention facilities overseen by the current administration. These exceedingly overcrowded detention centers are unsanitary, unhealthy, unsafe and are leading to extreme, and sometimes fatal, mental and physical health outcomes for children. These conditions are unconscionable and are not a result of a lack of funding or resources, but rather, are the result of intentional policies put in place to deter individuals from seeking protection. The American Association of Pediatrics has found that family detention facilities do not meet basic standards for children and "no child should be in detention centers or separated from parents." CWS demands that Congress reject any proposal that would expand family detention or violate the *Flores* agreement. CWS also urges Congress to cut funding for detention, deportations, and border militarization - and to exert robust oversight over DHS detention centers.

CWS remains gravely concerned by reports of ongoing family separation. A recent report has uncovered evidence that DHS has continued the systemic practice of child separation, long after the June 20, 2018 Executive Order that supposedly ended this harmful policy. DHS officials continue to illegally separate children from their parents based on faulty and unproven claims of criminal activity or other characteristics that are unrelated to a parent's ability to care for their child. This practice neglects due process and is extremely harmful to both children and their parents. CWS urges Congress to see the administration end family separation, eliminate criminal prosecution for migration-related offenses, and ensure swift family reunification.

CWS is equally troubled by any proposal that would weaken or eliminate provisions in the Trafficking Victims Protection Reauthorization Act (TVPRRA), which provides important procedural protections for unaccompanied children in order to accurately determine if they are eligible for relief as victims of trafficking or persecution. Weakening existing legal protections, especially for children, undermines the United States' moral authority as a leader in combating human trafficking and increases vulnerabilities for trafficking victims by curtailing access to due process, legal representation, and child-appropriate services. CWS urges the administration and Congress to affirm the right of all people to seek protection and ensure that individuals seeking safety are not returned to their traffickers and exploitation.

CWS urges the administration to rescind its April 2018 information-sharing agreement between DHS and the Department of Health and Human Services (HHS) that turns HHS into an immigration enforcement agency. This practice prolongs family separation and results in children remaining in unsafe and unsanitary detention facilities for far too long. The agreement "requires HHS to share the immigration status of potential sponsors and other adults in their households with DHS to facilitate HHS's background checks." This policy has caused the population of detained unaccompanied children to balloon since sponsors are afraid to come forward out of concern about immigration consequences for themselves or a loved one. We demand that the administration immediately revoke this agreement so that children can be released as soon as possible and sponsors are not forced to choose between caring for their children or risking deportation.

Congress and the administration should utilize community-based, least-restrictive alternatives to detention (ATDs) that connect individuals with family members, faith-based hospitality communities, and local services to help them navigate the legal system. The Family Case Management Program (FCMP) is effective and less expensive than detention, connecting people with legal counsel, providing case supervision, and helping with child care. The program is 99% effective at having families show up for check-ins and court appearances and also ensures departure from the United States for those who are not granted protection.

Our faith traditions call us to welcome the stranger. CWS calls on the administration to stop detaining children and families - and ensure that all people are treated with the inherent dignity they deserve.

Post-Hearing Questions for the Record Submitted to Mr. Mark Morgan From Senator Maggie Hassan	I to Improve
"Unprecedented Migration at the U.S. Southern Border: What is Required to Improve Conditions?"	
Committee:	HOMELAND SECURITY (SENATE)

Question#:	1
Topic:	Cybersecurity Standards
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: Earlier this year, a Customs and Border Protection subcontractor - Perceptics - was a victim of a cybersecurity breach. Hackers stole tens of thousands of photos of travelers' faces and license plates collected by Customs and Border Protection on the US-Mexico border from the subcontractor's network, and then leaked these images publicly.

What has Customs and Border Protection done to ensure that the contractors and subcontractors adhere to the highest cybersecurity standards?

Response: U.S. Customs and Border Protection (CBP) has a robust process to ensure contractors and subcontractors adhere to the highest cybersecurity standard. For example, CBP requires all contractors and service providers to maintain appropriate data integrity and cybersecurity controls and follow all incident response notification and remediation procedures. CBP contracts often include specific provisions requiring a subcontracting plan from prime offerors that detail elements of prime contractor oversight, control and communications, which is incorporated into the resultant award. In addition, numerous Government clauses in a prime contract flow down to subcontractors, including CBP's security and privacy clauses.

CBP does not tolerate the misuse of CBP data. We took appropriate action in this case and following the incident, CBP required the prime contractor to immediately terminate its subcontracting arrangement with Perceptics, and later suspended Perceptics from federal contracting. Although the federal-wide suspension has since been lifted CBP has entered into an Administrative Compliance Agreement with Perceptics, which will correct risk factors identified in the CBP inquiry. Perceptics has not been allowed to return to work on any CBP contracts.

Question#:	1
Topic:	Cybersecurity Standards
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Moreover, after we uncovered the security breach, even though CBP was not responsible for the breach and no CBP systems were compromised, we took affirmative action to determine how we could improve policies and procedures. Based on this review, CBP is taking the following steps:

- Deploying cyber enhanced technology (audit tracking, logging, enhanced encryption) and upgrading the operating system to all vehicle lanes to further protect image data
- Restricting removable media usage and rolling out enhanced insider threat capabilities
- Updating all contractual, policy, and security requirements
- Enhancing usage of Data Loss Protection and assess encryption practices across the enterprise

CBP will continue to review policies and procedures to determine how we can strengthen our overall security posture and our oversight of contractors to help prevent future incidents.

Question: What measures are in place to audit subcontractors' cybersecurity practices?

Response: CBP has historically conducted audits of a subset of IT contractors authorized to store or process sensitive information on its behalf. We are now expanding that to include all IT contractors. CBP is also proactively requesting that all IT contractors submit an official certification statement and complete a questionnaire attesting that they and their subcontractors understand and are complying with all security clauses. The purpose of the questionnaire is to document that the contractors are utilizing good security practices to safeguard sensitive government information.

Additionally, in this specific case, the prime contractor that Perceptics was subcontracted through has completed a full review of their cybersecurity practices. The prime has implemented a revised concept of operations for security that focuses on: people (training, certification, daily security scrums); suppliers (third party risk management, supply chain security controls, enhanced standards for new equipment); process (additional security reviews, inventory control, enhanced checklists and standard operating procedures, penetration testing); and technology (revised architecture, encryption, logging). CBP also conducted a comprehensive review of the prime contractor's compliance (which includes the subcontractor's compliance) with CBP cybersecurity requirements. Several security enhancements have been made that will help prevent such incidents and provide better auditing capabilities going forward.

Question#:	1
Topic:	Cybersecurity Standards
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: Public reports indicate that the stolen data appeared online as early as May 23, 2019, and yet on June 10, Customs and Border Protection stated that none of the data had been identified "on the Dark Web or Internet."

When did CBP become aware that this data had been posted online?

Response: On May 24, 2019, the CBP Security Operations Center discovered media reports about a ransomware attack on a subcontractor that specifically identified CBP data. In response to CBP inquiries, on May 31, the Prime contractor notified CBP that the subcontractor took copies of CBP personally identifiable information and copied this sensitive information on to their corporate servers without CBP authorization. CBP subsequently initiated an assessment to determine which records were released to the Dark Web. Additionally, the subcontractor employed a forensic analysis vendor to conduct an assessment. To date, both CBP and the subcontractor forensic analyses show very few photos have surfaced on the Dark Web that are sourced from CBP operations.

Question: What actions is Customs and Border Protection taking to ensure that it is notified of future breaches in a timely manner?

Response: CBP will continue to ensure the inclusion of contract clauses regarding incident response, reporting and notification requirements. This is significant for vendor internal networks that are not directly connected to CBP and able to be monitored and processed through the CBP security suite. CBP also continues to enhance security capabilities and technologies across all CBP networks, while continuously improving attack sensing and warning and incident response processes and procedures.

Post-Hearing Questions for the Record
Submitted to Mr. Mark Morgan
From Senator Kamala D. Harris

red to Improve

"Unprecedented Migration at the U.S. Southern Border: What is Required to Improve Conditions?"

Committee:	HOMELAND SECURITY (SENATE)
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Question#:	2
Topic:	Spanish-Speakers
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: According to the U.S. Customs and Border Protection's guiding principles for the Migrant Protection Protocols (MPP), there are certain categories of migrants who are not amenable to MPP. Under the guiding principles, the Port Director has the discretion to determine additional categories of aliens that are not amenable to MPP. However, there have been reports indicating inconsistent implementation of the policies governing MPP.

The Associated Press has previously reported that Border Patrol officials in San Diego were instructed to target Spanish-speaking migrants for inclusion in the MPP. Moreover, it has recently been reported that MPP will be expanded to include migrants from all Spanish-speaking countries. Can you confirm whether Border Patrol has been instructed to prioritize Spanish-speakers for inclusion in MPP?

Please provide a copy of the memorandum referenced by The Associated Press in your response.

Response: The Migrant Protection Protocols (MPP) Guiding Principles are publicly available. at <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>. On September 10, 2019, Vice President Pence and Foreign Minister Ebrard agreed to implement MPP to the "fullest extent possible. Implementation expansion of MPP—including operational implementation of the Guiding Principles—is a matter of ongoing discussions, and done in close coordination, with the Government of Mexico.

Question#:	2
Topic:	Spanish-Speakers
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Vulnerable indigenous migrants who speak Spanish are not necessarily fluent in the language. How is CBP assessing Spanish fluency for the purposes of implementing MPP?

Response: Aliens from countries where Spanish is the predominantly spoken language are subject to MPP. Proficiency in Spanish is not a requirement for processing under MPP.

CBP has a protocol for law enforcement personnel when individuals are encountered who are limited in their English proficiency. In instances where in-house language capabilities are not sufficient, CBP has instituted use of contract telephonic interpretation services. Depending on the specific languages available by a contract telephonic interpretation service that the CBP office has contacted, rare and indigenous languages may be available. The requirements for using interpretation services, if the alien cannot understand a language spoken by the inspecting officer, is a long-standing practice regardless of whether the applicant is amenable to MPP. Aliens from Spanish speaking countries are amenable to MPP and translators for indigenous languages are available as needed.

Question#:	3
Topic:	Waiting for Proceedings
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: How many non-Spanish speaking migrants are currently waiting in Mexico for their immigration proceedings?

Response: CBP does not maintain statistics based on languages spoken. Questions about the number of individuals who remain in immigration proceedings should be addressed to DOJ.

Question#:	4
Topic:	Prosecution Determination
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: How is CBP determining whether migrants subject to MPP face persecution or torture in Mexico?

Response: Regarding aliens that are amenable to MPP, CBP does not make any determination regarding fear of return to Mexico. Aliens processed for MPP who affirmatively state a fear of return to Mexico at any point in the process, are referred to U.S. Citizenship and Immigration Services (USCIS) for screening prior to any return to Mexico.

If USCIS determines that an alien who affirmatively states a fear of return to Mexico is more likely than not to face persecution or torture on account of a protected ground, the alien will be processed according to normal processes and procedures but may not normally be processed for MPP. Officers retain all normal discretion on any other available disposition, including Notice to Appear, waivers, or parole.

Question#:	5
Topic:	Social Media Investigation
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On July 1, 2019, ProPublica reported that up to 9,500 current and former CBP employees from across the country belong to a private online group known as "I'm 10-15"-CBP code for "aliens in custody." The group was reportedly started in August 2016 and its page contains a series of derogatory remarks and graphic images targeting immigrants fleeing persecution in their home countries. According to your written testimony, CBP's Office of Professional Responsibility (OPR) has opened an investigation and identified 72 current and former CBP employees affiliated with this social media group.

Please provide a breakdown detailing how many current employees affiliated with the social media group (1) have not been subject to any action at this time, (2) have received "cease and desist" letters and (3) have been placed on administrative duties or received any other disciplinary action pending the results of the OPR's investigation.

Response: As of August 26, 2019, 130 investigations have been opened on current and former employees as a result of affiliation with this social media group. The investigations and the disciplinary processes are both ongoing but have not yet been finalized. As a result, there have been no final actions taken as of the time of this writing.

Although the investigation is ongoing, here is the latest information as of September 4, 2019.

- 1) Approximately 9400 of the suspected 9500 members have not been subject to any action at this time.
- 2) 59 employees have received a cease and desist letter.
- 3) Fourteen (14) employees have been placed on administrative duties following receipt of a letter proposing their removal from federal employment and there are no employees on administrative duties awaiting the completion of an OPR investigation into their conduct.

Question: How many of the employees subject to any of the above actions were or remain in supervisory roles?

Response: 27

Question: Please provide copies of the "cease and desist" letters issued to CBP employees in your response.

Question#:	5
Topic:	Social Media Investigation
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Response: For privacy concerns, individual cease and desist letters will not be provided; however, a template of the letter is being provided.

Question#:	6
Topic:	Addressing Misconduct
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On July 3, 2019, my colleagues and I requested that DHS OIG address six categories of questions in its final report on its investigation of the CBP conduct reported by ProPublica. On August 2, 2019, DHS OIG indicated that it believes our questions are best addressed by CBP OPR as part of its investigation into individual instances of misconduct, and our questions were conveyed to CBP. For your convenience, I have included those six requests below:

According to a recent Department of Homeland Security (DHS) Office of Inspector General (OIG) report, DHS does not have sufficient policies and procedures to address employee misconduct. What policies and procedures apply to the conduct described in the ProPublica report?

Response: There are multiple policies and procedures that apply to the conduct described in the ProPublica report. These policies include: CBP Standards of Conduct Directive 51735-013A; the February 2018 Memorandum on Social Media Posts by CBP Office of Professional Responsibility (OPR) Assistant Commissioner Matthew Klein; the Anti-Discrimination Policy; and the Department of Homeland Security (DHS) Policy 4300A Sensitive Systems Handbook.

Question: Do they sufficiently encompass the reported conduct?

Response: These policies clearly state, “employees will not make abusive, derisive, profane or harassing statements or gestures, or engage in any other conduct evidencing hatred or invidious prejudice to or about one person or group on account of race, color, religion, national origin, sex, sexual orientation, age or disability.”

These requirements also apply to off duty conduct that has a nexus to the work place when it is sufficiently egregious, adversely affects an employee’s or coworkers job performance or management’s trust and confidence in the employee’s job performance; or interferes with or adversely affects the agency mission. If an employee’s off-duty conduct, including speech, has a nexus to the workplace and is in violation of law or policy that speech may be actionable misconduct.

Question#:	7
Topic:	Misconduct Allegations
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: How many allegations of misconduct or other reportable information relating to the type of conduct described in the ProPublica report were made to the Joint Intake Center for CBP employees?

Response: Regarding the ProPublica article, and subsequent media reporting, CBP OPR conducted analysis of the specific posts (cited by the articles) to identify current or former CBP employees who engaged in posting photos, memes, and comments; as well as the individuals who were “tagged” or were alleged by others to have engaged in postings. The CBP OPR Joint Intake Center (JIC) also received individual complaints and self-reports from current CBP employees who were members of the “I’m 10-15” group. As of November 8, 2019, CBP OPR has initiated 131 investigations and has completed 106 investigations; 25 investigations remain ongoing.

Question: What was the nature of each allegation?

Response: As noted above, OPR reviewed all information reported by ProPublica, as well as subsequent media reporting, and JIC reporting. CBP OPR conducted analysis of the specific posts to identify current or former CBP employees. The information was utilized to identify those employees who engaged in posting photos, memes, and comments; as well as the individuals who were “tagged” or were alleged by others to have engaged in postings. Each identified employee resulted in the creation of an employee-specific investigation.

Question: How many employees reported for alleged misconduct were in supervisory roles?

Response: As of November 8, 2019, 27 employees were identified as holding a supervisory role.

Question: How were these allegations or reports addressed?

Response: When OPR received an allegation a file was created and sent to the DHS Office of Inspector General (OIG) for review. Upon declining to investigate, the DHS OIG referred the allegations back to CBP OPR where investigations are currently being conducted into these matters.

Question#:	7
Topic:	Misconduct Allegations
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: How many members of the group described in ProPublica's report are current employees of CBP?

Response: The investigation is ongoing and it is still unknown as of August 26, 2019 how many members of the group are current employees of CBP.

Question#:	8
Topic:	Hold Employees Accountable
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: How did DHS or CBP apply the existing policies and procedures to current CBP employees to hold them accountable for the conduct described in the ProPublica report? Please include in your report whether any individuals were terminated from CBP employment or received any other disciplinary action in connection with the conduct described in the ProPublica report.

Response: As of November 8, 2019, CBP's OPR has initiated 131 investigations and has completed 106 investigations. As each employee-specific investigative report is completed by OPR, these are referred to CBP's Office of Human Resources Management (HRM) as it is responsible for discipline administration within CBP. The OPR investigative report then becomes part of a multidisciplinary review process that includes the CBP Office of Chief Counsel and HRM's Labor Employee Relations Division, which administers the Discipline Review Board. The facts of each case was presented to CBP's Discipline Review Board (DRB) – a three member panel trained in evaluating misconduct and adverse actions. Utilizing the OPR investigative report as the principal basis of fact, the DRB is reviewing these cases to determine whether misconduct that warrants discipline has occurred, and if so, what disciplinary action should be proposed, whether a written or verbal counseling, official reprimand, suspension, demotion, or removal.

Federal law requires that Federal employees be afforded full due process for any proposed disciplinary action. 5 U.S.C. §§ 7503, 7513. Federal employees are entitled to receipt of the proposal notice explaining the reasons for the proposed action, reasonable time to submit an answer to the proposed discipline, to be represented by an attorney or other representative, and a written decision stating the specific reasons for the action. If the CBP employee is a member of a collective bargaining unit, there may be additional procedures or requirements under 5 U.S.C. Chapter 71 or the Collective Bargaining Agreement.

A deciding official then determines whether misconduct occurred and if so, the reasonable penalty warranted. The maximum penalty is that which was stated in the proposal letter. If the deciding official determines that a suspension, demotion or removal is warranted, then a decision letter is issued to the employee that explains the reasons for the decision and informs the employee of their right to appeal the decision. Any employee who receives a suspension of greater than 14 days, a demotion or a removal, may file an appeal with the Merit Systems Protection Board. Alternatively, a union may file a grievance and invoke arbitration, contesting the decision of any type of

Question#:	8
Topic:	Hold Employees Accountable
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
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discipline, for any bargaining unit member. Finally, any employee may elect to file a complaint with the Equal Employment Opportunity Commission if they think the action was motivated by discriminatory animus. Until the appeal, grievance or complaint is final, the disciplinary matter is not concluded.

Question#:	9
Topic:	Training
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Does DHS offer any social media, implicit bias, or any other training that may prevent this conduct by CBP employees going forward?

Response: CBP's Office of Training and Development has created training for Personal Use of Social Media that is mandatory for all 60,000+ employees to be completed by 30-September 2019, and annually thereafter. There is an already existing training program on the Operational Use of Social Media that was developed in 2018, and there are other online and resident training programs for different audiences that discuss personal and/or workplace biases.

Question: Please include in your report specific recommendations for how CBP agents who have engaged in misconduct should be held accountable for their actions.

Response: Allegations of misconduct cases against CBP agents who are found to have engaged in misconduct related to social media; i.e. "10-15" Facebook Group" are reviewed by a board of senior level employees. The board then recommends disciplinary action up to and including removal from the federal government based on the seriousness of the misconduct.

Question#:	10
Topic:	Final Report
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Do you commit to ensuring that these questions are addressed in a final report to this committee detailing the results of CBP OPR's investigation within two weeks of its completion?

Response: CBP is available to brief the Committee once the entire process has been completed. Please keep in mind that after each investigation is completed, if appropriate, there is an adjudications phase for which all employees have due process rights, including appeals.

Question#:	11
Topic:	Overcrowding
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: In her written testimony to the Committee, Acting DHS Inspector General Costello referenced two recent Management Alerts issued by her office identifying "issues that posed a serious, imminent threat to the health and safety of CBP personnel and detainees requiring immediate action by the Department." She further stated that the "[OIG] remain[s] concerned that DHS is not taking sufficient measures to address the issues outlined in [the] Management Alerts"

Please explain what, if any, efforts CBP has undertaken to create a corrective action plan to address the dangerous overcrowding and immediate health and safety risks at CBP facilities.

Response: CBP Officials met with OIG in person and discussed the alerts that were generated and made public. CBP has made many adjustments and shifted resources to accommodate the larger populations being detained near our borders. Examples include utilizing soft-sided facilities at our busier locations and implementing Immigration Hearing Facilities on port properties in Laredo and Brownsville, Texas.

Question: When does CBP expect to complete its corrective action plan?

Response: CBP is not undertaking a corrective action plan at this time; however, U.S. Border Patrol (USBP) has worked to enhance its existing contracts directly impacting detention conditions, including several contracts. These contracts include medical support, care giving support, additional shower availability, and food contracts. CBP continually reassess all angles relating to detention conditions as appropriate to align with their law enforcement mission CBP has also stood up additional soft sided facilities to help prevent overcrowding.

Question: Do you commit to providing a copy of the completed corrective action plan to this committee within two weeks of its completion?

Response: Again, CBP is not undertaking a corrective action plan at this time. CBP policy is committed to the safety, security and care of those in our custody. Adjustments to detention are grounded firmly in the experience and policies of CBP and are continually evolving and being reassessed.

Post-Hearing Questions for the Record Submitted to Mr. Mark Morgan From Senator Kyrsten Sinema	<hr/> <hr/> <hr/> <hr/>
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Question#:	12
Topic:	Changes to OPR
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: During our discussion during the hearing on July 30, 2019, you said that a change you were working toward was to have Health and Human Services Office of Refugee Resettlement send incident reports that allege misconduct, poor conditions or other information that needs be investigated to both DHS's Office of Civil Rights and Civil Liberties (CRCL) and CBP's Office of Professional Responsibility (OPR). This would likely mean that OPR would be receiving additional files it needs to examine and investigate.

What changes are you making to CBP OPR to improve its ability to investigate such incidents and take action to protect children and migrants?

Response: OPR currently provides superior investigative products and services across CBP by leveraging years of skills and experience of its criminal investigators and support staff, who have joined OPR from agencies throughout the Federal government. CBP OPR also continues to explore and implement innovative, integrated programs and capabilities designed to prevent, detect and investigate instances of corruption and misconduct across all levels of CBP.

CBP complies with its National Standards on Transport, Escort, Detention, and Search (TEDS) policy outlining detention requirements for subjects in CBP facilities. Additionally, allegations of sexual assault and abuse involving detention facility employees and migrant detainees are handled according to the CBP Zero Tolerance Policy and CBP Directive 2130-030; Prevention, Detection and Response to Sexual Abuse and/or assault in CBP Holding Facilities, as well as 6 CFR Part 115 – Sexual Abuse and Assault Prevention Standards. When emergent issues related to the safety of human life are identified, which generally happens on short notice, CBP OPR has and

Question#:	12
Topic:	Changes to OPR
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kyrsten Sinema
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will continue to deploy a high performing team of special agents to the impacted location. The inspection will be comprised of an on-site facility inspection, for which environmental factors as well as medical conditions, policies, procedures, and protocols are identified, verified, and documented.

Question: Do you plan to add additional staff to OPR? If so, what kind of staff?

Response: OPR's authorized criminal investigator positions increased by six (6) to 307 with the enactment of the Consolidated Appropriations Act, 2020 to support the DHS-wide effort to develop a Counter Intelligence and Insider Threat program.

Question: What other resources do you plan to add to OPR?

Response: As the integrity and security functions of the OPR mission require different skillsets and position types, OPR is actively reviewing needs beyond the Criminal Investigators.

Question: During our discussion, you also mentioned that getting all incident reports to OPR and CRCL at the same time was the end state you were working toward. What is your timeline for making that goal a reality?

Response: CBP has made outreach to Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) in order to provide direct contact information to CBP OPR. CBP OPR Special Agents in Charge have made outreach to HHS ORR facilities in their areas of responsibility to streamline the reporting process. Additionally, CBP and DHS Office of Civil Rights and Civil Liberties (CRCL) further discussed this issue at the August 22, 2019, quarterly de-confliction meeting in conjunction with DHS OIG and U.S. Immigration and Customs Enforcement (ICE) Office of Professional Responsibility.

Question#:	13
Topic:	Additional Investigations
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: At the hearing, you mentioned opening an additional 23 investigations based on the 381 incident reports that CBP eventually received from ORR and CRCL. When do you expect those investigations to be complete?

Response: CBP has opened multiple investigations into incidents received from CRCL and HHS ORR. Currently, all investigations opened as a result of these complaints are being actively investigated by the CBP OPR office with jurisdiction over the incident. CBP OPR will complete the investigations in a timely manner.

Question: When you complete those investigations, or when you are able to do so, will you share with my office the corrective steps that CBP is taking to prevent such incidents from happening at the Yuma facility in the future?

Response: CBP will be happy to provide Senator Sinema's office a briefing regarding corrective measures and steps taken to prevent these incidents from occurring at the Yuma facility in the future at the conclusion of all investigations on this matter.

Question#:	14
Topic:	Operation Safe Return
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Mr. Morgan, you and I have spoken about Operation Safe Return. As you know, this is an important project I am working on with Chairman Johnson to see how our existing credible fear process can be more efficient and effective. Some have criticized this proposal over worries that it will negatively impact due process for migrants. If a pilot program such as this goes forward, will you make sure that CBP, for its part, ensures that migrants have access to counsel and that all agents and officers refer individuals who express fear for an official credible fear interview?

Response: While I do not wish to speculate on what may or may not be included in an Operation Safe Return pilot, CBP will remain committed at all times to ensuring that illegal aliens have access to counsel and are referred for credible fear interviews when appropriate.

Question: If DHS moved forward with a pilot program such as was laid out in the Operation Safe Return proposal, what do you see being the biggest challenges with executing it?

Response: While I understand the overall Operation Safe Return proposal, I believe it would be premature to comment on this without knowing the fully agreed upon elements of a future pilot.

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Question#:	15
Topic:	Conditions in CBP Facilities
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: On July 24, 2019, Border Patrol Chief Carla Provost testified before the House Appropriations Committee, and she said, "I don't want children in my facilities. They are not meant to house that population." I continue to be deeply troubled by this apparent lack of willingness on the part of CBP to adjust to the reality of who is in their custody. The current conditions in CBP facilities have been documented and reported on by the OIG, the American Academy of Pediatrics, Members of Congress, and countless others.

Are you aware that the current conditions in CBP custody - lights on at night, cold facilities, overcrowding, lack of clean toilets and hand-washing, inappropriate sleeping arrangements - weaken children's ability to fight off infection, making them more susceptible to preventable, potentially infectious conditions?

Response: It is important to note that Chief Provost's comment was not a denial of the current demographic crossing the border but rather an appeal to Congress to revise our immigration laws so that holding children in CBP facilities is no longer necessary.

Due to the challenges of the long and dangerous journey north, by the time CBP personnel encounter minors, many of them are already physically weakened. CBP separates ill detainees from the general population to reduce the spread of infectious diseases. CBP also cleans its facilities on a regular basis and provides all individuals in custody regular access to clean drinking water and food, and appropriate products soap for handwashing. Lights are kept on at night to prevent violent behavior or assault between migrants, including sexual assault.

With regard to temperature, CBP's TEDS states, "When it is within CBP control, officers/agents should maintain hold room temperature within a reasonable and

Question#:	15
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comfortable range for both detainees and officers/agents. Under no circumstances will officers/agents use temperature controls in a punitive manner.” CBP maintains the temperature range of its hold rooms between 66 and 80 degrees Fahrenheit. These hold room temperatures are logged in the electronic custody log and checked regularly. This is checked at the beginning of every shift.

Question#:	16
Topic:	Confiscated Medication
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: If a child apprehended by CBP has medication, or if an adult traveling with a child has medication prescribed to the child, what are CBP's policies and/or procedures with respect to handling the medication?

Response: Per USBP Policy, medications are not to be left in the possession of the alien. They are secured separately, preferably with the alien's property or with the contracted medical providers. ICE will not accept aliens with non-U.S. prescriptions. Medication needing to be regularly administered to an alien is entered into e3 Detention Module (USBP's processing system) and tracked electronically. Red flag indicators appear when a timeline is approaching. The red flag indicator must be physically "cleared" once the red flag indicator addressed.

All aliens who have non-U.S. prescribed medications are assessed by medical professionals at those locations with contracted medical providers. In locations without these providers, aliens in need of medical treatment or medications are transported to an appropriate medical facility to receive an assessment, and possible prescription medication, by local medical personnel.

The USBP follows the TEDS policy nationwide regarding medical care for all individuals in CBP custody.

Question: If medications are confiscated by CBP when the child arrives in detention, what steps are taken to ensure that the child still receives the required medication or is seen by a health care professional to obtain a new prescription?

Response: Per Section 7.5 of the TEDS policy:

All medications will generally be maintained with the detainee's personal property unless other conditions warrant, such as the medication needing to be regularly administered due to need, and/or needing to be properly stored as the prescription requires.

Question: When a family unit is released from detention, are medications returned to the family?

Response: All aliens who have non-U.S. prescribed medications are assessed by medical professionals at those locations with contracted medical providers. In locations without these providers, aliens in need of medical treatment or medications are transported to an

Question#:	16
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appropriate medical facility to receive an assessment, and possible prescription medication, by local medical personnel.

When a family is released from detention, all stored property along with medication is returned to the alien. All stored property and medication is tracked electronically.

Question: Who oversees the confiscation of a medication from a child during processing?

Response: CBP agents or officers will conduct the confiscation in accordance with agency policy.

Question: Is it someone with any medical training to be able to know whether the medication is necessary to prevent acute illness or death from an underlying condition such as diabetes, seizure disorder, or asthma?

Response: Yes. All aliens who have non-U.S. prescribed medications are assessed by medical professionals at those locations with contracted medical providers. In locations without these providers, aliens in need of medical treatment or medications are transported to an appropriate medical facility to receive an assessment, and possible prescription medication, by local medical personnel. If needed and in cases of emergent needs, at the point of encounter, initial intake or at any point thereafter, medical providers will request further emergency care and transport by utilizing the local 9-1-1 system.

Question#:	17
Topic:	Explaining to Children
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: As you are aware, the fear and toxic stress of separation can lead to short- and long-term implications for children's health.

What is CBP's standard process for explaining to children and their parents why and for how long they will be separated during processing and detention?

Response: When CBP encounters a family unit (defined as a parent or legal guardian accompanied by one or more minor child), CBP will not separate the child from either parent/legal guardian contrary to the Court Order issued on June 26, 2018 in *Ms. L. v. ICE*, No. 18-428 (C.D. Cal. June 26, 2018). If CBP determines that it is necessary to separate a parent from his or her child, and if there is not an immediate safety or security of the child concern (e.g., parent/guardian is likely to abuse the child), the parent/legal guardian and children are generally informed of the reasons for the separation. CBP officers or agents may have an opportunity for both the parent and the child to be present to explain the process and next steps. The parent is then provided with a tear sheet explaining the general reason for the separation, as well as providing information about how a parent can contact their child.

Question#:	18
Topic:	Separation Policy
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: What prevents CBP from setting a policy that allows family units where members are separated during detention to spend time together, and to be kept informed about the circumstances surrounding their separation?

Response: CBP's National Standards on Transportation, Escort, Detention, and Search Policy states that family unity should be maintained to the extent that it is operationally feasible and so long as there is no danger to the child. Accordingly, CBP will adhere to this policy in circumstances where a parent or legal guardian will be separated so long as it is not for reasons that include concerns for the safety and wellbeing of the child.

CBP makes efforts to provide contact between family members during their time in CBP custody, absent an articulable safety concern. Additionally, CBP provides parents who are separated from their children with a tear sheet explaining the general reason for the separation. When DHS through CBP or ICE, processes family units that result in a separation of child(ren) from their parents and/or legal guardians, the child(ren) are classified as unaccompanied alien children (UAC). UAC are subsequently transferred to the custody of HHS ORR within 72 hours of the UAC designation. HHS ORR is the agency responsible for the care and placement of UAC.

ICE's role in the reunification of parents and children separated by DHS has been limited to transportation and coordination among relevant government agencies, usually HHS ORR. However, when the parent and/or legal guardian is separated from his or her child(ren), the adults are typically placed into ICE custody. ICE coordinates with HHS on all reunification efforts.

Since August 2, 2018, ICE detention facilities are able to identify members of family units that are currently in custody, while also improving the flow of information to detainees. On June 6, 2018, guidance was distributed to ICE field office leadership entitled "New Process for Ensuring Regular Communication and Removal Coordination of Separated Parents and Children." This guidance reiterates ICE policies mandating the facilitation of regular communication between detained individuals and minor children, and instructs that English and Spanish-language flyers informing separated parents on how to locate their children in ORR custody be posted in all detention facilities. The flyer describes how parents can seek assistance locating minor children through the Detention Reporting and Information Line (DRIL) or by reaching out to ORR directly, and provides a DHS contact to further address questions regarding the basis for separation. Parent and legal guardian requests are generally granted unless there is a

Question#:	18
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protection order or a state child welfare agency or ORR has child protection concerns. Additionally, any detained individual may contact the DRIL to request communication with other immediate family members. Again, communication would only be denied for a similar basis as parents or legal guardians. Under ICE detention standards, this includes adoptive parents, step-parents, aunts, uncles, grandparents, and siblings.

Requests that ICE receives regarding a parent not in ICE custody are directed to the appropriate agency. ICE has also designated field office staff and other points of contact to work directly with ORR with setting up regular communication between parents and their children as well as other immediate family members when requested.

Additionally, all ICE standards permit visitation by parents and legal guardians and other immediate family members (as defined in the ICE detention standards). ICE Directive 11064.2, *Detention and Removal of Alien Parents or Legal Guardians* (August 29, 2017), also referred to as the Parental Interests Directive, outlines the requirements for visitation. The Directive specifies where a facility has no provision for visits by minors, ICE must arrange for a visit within the first 30 days. After that time, ICE must consider a transfer request, when practicable, to allow such visitation. When in-person visitation is not practicable, videoconferencing is permitted to the extent technologically feasible. Visitation is permitted with all immediate family members. Additionally, for children in ORR custody or a state's Child Protective Service custody, those custodial agencies typically must approve video-communication or in-person visitation first.

Question#:	19
Topic:	Aware of Rights
Hearing:	Unprecedented Migration at the U.S. Southern Border: What Is Required to Improve Conditions?
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Are migrants in CBP custody made aware in person and/or in writing of their constitutional rights and the right to counsel?

Response: Applicants for admission to the United States do not have the right to representation during primary and secondary admissibility inspection. *See* 8 CFR § 292.5(b). If an inadmissible applicant for admission is referred for further proceedings, e.g. expedited removal or removal proceedings before an Immigration Judge, the alien is provided with a list of Free Legal Service Providers for the Immigration Court where the further proceedings may be conducted. Additionally, those aliens who are criminally prosecuted are also given additional notices in compliance with Miranda and other legal warnings. For aliens placed into MPP, CBP has updated the tear sheet provided to migrants enrolled in MPP with additional information about the immigration court process. “Know Your Rights” videos are being played in the waiting area of the two temporary hearing locations, and a script of the “Know Your Rights” video is also available.

DATE, 2019

NAME
Border Patrol Agent
LOCATION

Agent NAME,

This office has received notification that you have been involved in potentially inappropriate off-duty misconduct regarding the Facebook group "I'm 10-15."

Given the nature of the action, I have determined it is in the best interest of U.S. Customs and Border Protection (CBP) to temporarily relieve you of your normal duties, and assign you to administrative duties effective upon receipt of this letter. You will immediately relinquish your badge, credentials, body armor and any issued firearm to the supervisor issuing this notice in accordance with CBP's Use of Force Policy, Guidelines and Procedures Handbook, Directive Number HB 4500-01C, Chapter 1, Section F. While assigned to administrative duties, you are to report to LOCATION. Your schedule of work will be from 0800 to 1600. You will be assigned Saturdays, Sundays, and Federal holidays as days off. You will not be allowed to work scheduled overtime and your Border Patrol Pay Reform Act (BPAPRA) selection will be changed to Basic. You will report to NAME, PHONE for any requests for leave.

Failure to follow any of the instructions contained in this notification may result in disciplinary action, up to and including, removal from Federal employment.

Please note, this is not a disciplinary action, but it is necessary considering the serious nature of the potential misconduct. You will remain assigned administrative duties as described above until such a time as your eligibility for the full and safe performance as a Border Patrol Agent is determined and/or if any administrative action is proposed against you.

Additionally, I would like to remind you that the Employee Assistance Program (EAP) is available to assist you with any personal problems that you may be experiencing. The services are free and confidential and your participation in this program is voluntary. You need only to call (800) 755-7002 to obtain further information or immediate assistance.

If you have any questions, please contact NAME, Employee Relations Specialist, at (202) PHONE NUMBER.

Please sign the receipt acknowledgment copy of this letter as evidence that you have received the original. Your signature does not mean that you agree or disagree with its contents.

Administrative Duties Letter
Page 2 of 2

Sincerely,

NAME
TITLE
LOCATION

Acknowledgment of Receipt:

NAME _____

Date _____

Witness's Signature _____

Date _____

Witness's Printed Name and Title _____

Post-Hearing Questions for the Record
Submitted to Ms. Jennifer Costello
From Senator Jacky Rosen

"Unprecedented Migration at the U.S. Southern Border: What is Required to Improve Conditions?"

July 30, 2019

1. **CHILD HEALTH & PEDIATRIC MEDICAL CARE:** On July 24, 2019, Border Patrol Chief Carla Provost testified before the House Appropriations Committee, and she said, "I don't want children in my facilities. They are not meant to house that population." I continue to be deeply troubled by this apparent lack of willingness on the part of CBP to adjust to the reality of who is in their custody. The current conditions in CBP facilities have been documented and reported on by the OIG, the American Academy of Pediatrics, Members of Congress, and countless others.
 - a. Are you receiving reports from pediatricians or other medical providers about children who have to be hospitalized after being released from CBP custody as a result of conditions in CBP facilities?
 - b. What is the DHS OIG doing to investigate these reports?

Answer: A comprehensive search of the Office of Inspector General's (OIG) complaint database revealed four complaints alleging that two different children were hospitalized after being released from DHS custody.

Two of the complaints involve the death of a toddler several weeks after she and her mother were released from Immigration and Customs Enforcement (ICE) family detention at the South Texas Family Residential Center. The complaints allege that the child was not provided adequate medical care while in ICE custody. DHS OIG is investigating the toddler's death.

We also received two complaints regarding a 15 year-old girl that was hospitalized after CBP transferred her from its custody to the custody of the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR). The child alleged that while in CBP custody, she felt ill and requested medical treatment but was denied medical care by CBP. When the child arrived in ORR custody, her medical condition had worsened and she was taken to the hospital for evaluation. The two complaints involving this child were referred by the DHS OIG to the DHS Office of Civil Rights and Civil Liberties (CRCL).

DHS OIG has also been contacted by representatives of organizations such as the National Association of Pediatric Nurse Practitioners, the Dilley Pro Bono Project, and the American Academy of Pediatrics, whose members have expressed concerns about the medical care being provided to children in DHS custody. DHS OIG will continue its program of unannounced inspections of CBP and ICE facilities and will report on our findings regarding facilities' compliance with applicable standards, including standards related to medical care.

UNPRECEDENTED MIGRATION AT THE U.S SOUTHERN BORDER: THE YEAR IN REVIEW

WEDNESDAY, NOVEMBER 13, 2019

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:32 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Portman, Lankford, Scott, Hawley, Peters, Carper, Hassan, and Rosen.

OPENING STATEMENT OF CHAIRMAN JOHNSON¹

Chairman JOHNSON. Good morning. This hearing will come to order.

I want to first thank the witnesses for taking the time for your thoughtful testimony. I want to thank the audience members. I am not sure why you are not over on the House side, but we appreciate—it must have been paid staff. But I appreciate everybody coming here.

This is, from my standpoint—the hearing title is “Unprecedented Migration at the U.S. Southern Border: The Year in Review.” But what I would like to do is I would like to actually start with the decade in review. I would refer everybody to my chart.² This is a chart that I have been really updating for probably the last 3 or 4 years, I think as long as you have been on the Committee. I think it is important to kind of lay out what the history has been, certainly from my standpoint some key moments, key policy changes that I would certainly argue contributed to what I do consider an ongoing crisis, even though we have made some progress. But that chart reflects all minors and people coming into this country as family units. Earlier versions only focused on Central American children and family members. So initially, in 2009, 2010, and 2011, we had 3,000, 4,000, and 4,000 unaccompanied alien children (UAC). We were not even keeping track of families because it was not a problem.

In 2012—and, again, I would consider that a pretty seminal moment—was the issuance of the Deferred Action for Childhood Arrivals (DACA) memorandum, which I would argue by testimony was

¹The prepared statement of Senator Johnson appear in the Appendix on page 565.
²The chart referenced by Senator Johnson appear in the Appendix on page 601.

used by the coyotes, by the human traffickers, to help incentivize people. They would tell them, "The United States has changed its policy. You come to America, you get a piece of paper called a 'permiso,'" which was a notice to appear (NTA). Again, I know others may dispute this, but I think it is pretty obvious that that certainly started something.

Fast forward to 2014. 2014 was really the year when President Obama very accurately described a humanitarian crisis on the border when 137,000 unaccompanied children but also people coming as a family unit crossed the border and overwhelmed Customs and Border Protection (CBP). I remember leading a congressional delegation down there in early 2015, down into McAllen, Texas, and we were all singing the praises of Customs and U.S. Border Patrol (USBP), the humanity they were showing, the ingenuity they were showing in setting up a facility to separate children from adults, to make sure the children stayed safe. Now those same facilities are called "cages," very improperly so, because I think, if anything, we have gotten better at it. It is just the problem has grown so much more severely, as the chart shows.

In reaction to the humanitarian crisis of 2014, the Obama Administration said that they had to do something. There had to be a consequence. So they began detaining those families and those children together to adjudicate their claims, and it worked. You can see we went from 137,000 in 2014 down to 80,000 in 2016. But then a court intervened, as courts are continuing to intervene in this problem, and reinterpreted the *Flores* Settlement Agreement (FSA) I think clearly incorrectly. The *Flores* settlement dealt with unaccompanied minors, and now for the first time a court said, oh, no, it also includes accompanied minors. So now the government was faced with the fact that if we want to enforce the law, we are going to have to either detain the adults and release the children, or we have to release the families. What the Obama Administration decided to do is they released the families, and that began what was referred to as "catch and release," and you see the results. It went from 80,000 in 2015 to 137,000 in 2016, 117,000 in 2017, and 181,000 in fiscal year (FY) 2018. It was ramping up.

We started talking about caravans. Unfortunately, folks on the other side of the aisle started referring to it as a "manufactured crisis." I started producing this chart on a monthly basis. I actually went so far as to put it on a cup so I could distribute this to the news media so they would not just take my sheet, crumple it up, and throw it away, to start pointing out, no, this is not a manufactured crisis, this is something real. This is something overwhelming the courageous men and women of Border Patrol, the compassionate men and women of Border Patrol, who are just trying to deal with something that is, again, overwhelming.

In May, we hit the high-water mark of the current crisis: 4,651 individuals per day were crossing the border illegally. Now, that is the total number. That is not just women and children but families. Four thousand six hundred fifty-one per day. We no longer heard people talking about manufactured crisis. In May, what I started doing with my chart is I started extrapolating, saying if this continues at May's levels, we would end up with over 800,000 unac-

companied children, people crossing the border as a family unit, 800,000.

Now, the final results—and that is what this is all about, the year end in review. What was the final accounting? In the end it was 608,000 people who came to this country either as an unaccompanied child or as a family unit compared to 137,000 when President Obama declared it a “humanitarian crisis.”

I think we have hopefully laid to rest that this is a manufactured crisis. We have brought it down in terms of the averages—why don’t you put up the next sheet here? This is kind of my weekly report. I come from a manufacturing background, so I like to see what my daily, my weekly, my monthly, and my annual statistics are. So, again, we went from May of 4,651 per day to in September we went down to 1,749 on average.

Now, what is not shown here because for some unknown reason this is law enforcement sensitive, but members on the Committee have this in front of them, the last week I have figures on—and I can say this figure—it averaged about 1,372. So we have gone from 4,651 to less than 1,400. But I will never forget an interview that Secretary Jeh Johnson, the Department of Homeland Security (DHS) Secretary under President Obama, gave to MSNBC a few months ago. He said when he would come to the office and the numbers were more than 1,000, he knew he had a really bad day. So we are still 372 on average in one day over Secretary Jeh Johnson’s “really bad day.”

So, again, the purpose of this hearing is to lay out the reality, talk about where we were, where we have come, but I would also say describe what happened. Why did we go from—how did we get from 4,651 a day, how have we come down to less than 1,400? What else needs to be done? Maybe an even more important question, what threatens the progress we have already made?

I have to say I go down to the border, the individuals coming across here, the vast majority just want what we want. They want safety and security, and they want to take advantage of the opportunity. I am highly sympathetic with that, but it has to be a legal process. We have to get the illegal flow under control, and it is far from under control.

My last point, I want to thank Senator Peters and other Members of the Committee and some other colleagues on the other side of the aisle that worked with me. In the end, Senator Peters decided not to sign the letter of support for Operation Safe Return. There is a program initiated right now—hopefully Mr. Morgan will talk a little bit about that—of basically how can we more rapidly and more accurately determine those individuals that have come to this country illegally or without documentation that clearly do not have a valid asylum claim and safely return them back to their home country? The big contribution that Senator Peters made to that conversation was, well, if we are going to do something with that, let us gather the data. Let us figure out what is happening.

And so what I am hoping we are going to get out of this hearing is certainly some of the data. How many of these claims have been adjudicated from Central America? How many of those individuals actually have a valid asylum claim? Because if we are going to address this problem, from my standpoint the biggest problem is we

have such a low hurdle, that credible fear standard, that we just wave everybody in. The courts are completely backlogged, and a very low percentage of those individuals that we wave in that just end up melting into our society, we do not know where they go. By and large, we do not know where they are. But in the end, they do not have a valid asylum claim. We should not have ever waved them in. We have to increase that initial hurdle rate. But we need the data in order to actually enact public policy.

So, again, what I am hoping is going to come out of this hearing is better data, but then also, as we move forward with some of these programs that have shown some success—not enough, but some success—let us develop the data that will inform public policy, and then hopefully, in any problem-solving process, you gather the information, you define the problem, you define the root cause analysis, you set an achievable goal. Hopefully we can come together on a bipartisan basis and develop some real solutions on a bipartisan, hopefully nonpartisan basis. That is the whole purpose of all of these hearings on border security, but in particular, it is the purpose and the goal of this hearing.

So, with that, I will turn it over to Senator Peters.

OPENING STATEMENT OF SENATOR PETERS¹

Senator PETERS. Thank you, Mr. Chairman. Thank you to our witnesses here today.

I am proud to say that, over the past year, our Committee has been able to come together on a bipartisan basis to examine the migration and humanitarian challenges that we are facing at our border.

We have found compromise and passed common-sense legislation to address staffing shortages at the borders and ports of entry (POEs), strengthen security at both our Northern and Southern borders, and ultimately make our country safer.

In June, we came together to unanimously advance my bipartisan bill to strengthen border security and address law enforcement shortages at ports of entry throughout the country.

Last month, the full Senate approved my bill to hire more agricultural inspectors and canine units to protect the Nation's food supply from harmful contraband.

Last week, our Committee approved important legislation led by Chairman Johnson to support the U.S. Border Patrol by hiring new agents and support staff, improving retention, and providing medic training to agents that could save lives.

And just yesterday, I had a chance to see CBP officers and canines in action at Detroit Metropolitan Airport, and I was stunned to hear the number of seizures that they make to keep our country safe every day. I am proud that the men and women of CBP at Detroit Metro are leading the Nation when it comes to the interdiction of harmful biological material that is coming across the border.

In fact, Detroit Metro has been the number one intercepting port for the last 2 fiscal years with more than half of all interceptions at ports of entry nationwide.

¹The prepared statement of Senator Peters appear in the Appendix on page 566.

Detroit Metro has also pioneered training programs that have been deployed nationally with positive results being generated in Boston, Newark, and Dulles.

They also told me that, among all airports nationwide, Detroit Metro is second in the Nation for discovery of wood packing material containing very harmful pests that can damage the lumber industry and agriculture across the board. These species pose certainly a significant threat.

The CBP officers and canines in Detroit are doing phenomenal work to protect Michigan and the rest of the country from harm, and I am proud to support their efforts every day.

This past year, however, has posed many challenges for our border security professionals. The situation on our Southern Border and throughout Central America is dynamic. Our border security efforts should certainly reflect that fact.

Often this administration's border security policies have been shortsighted. If we are going to successfully address both the conditions on our border and the root causes that are driving this migration, we need to take a comprehensive approach that looks at the data and finds common-sense solutions to address these very serious challenges.

I appreciate our witnesses for joining us here today and for their commitment to serve our country. I also recognize that addressing border security and humanitarian challenges requires stable and effective leadership.

I am deeply concerned—I think that concern is shared by the Chair and everyone on the Committee as well—by the lack of Senate-confirmed leaders in nearly all of the top leadership positions at the Department of Homeland Security. In fact, we have three Senate-confirmed positions before us, and all three of you are Acting, not Senate-confirmed. I will continue to call on this administration to nominate qualified leaders for these vacant positions who can gain broad, bipartisan support in the Senate.

The men and women of DHS and the American people deserve stability; they deserve accountability that comes from nominating and confirming qualified leaders that can ensure that the Department can carry out this national security mission in a Senate-confirmed position. That permanence and stability is absolutely critical.

I look forward to hearing your testimony. Thank you again for your service.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Peters, and you know I completely agree with you in terms of getting individuals nominated and confirmed. The good news here is I think we do have some very highly qualified individuals in these acting positions, so that is also a bit of good news.

It is the tradition of this Committee to swear in witnesses, so if you will all stand and raise your right hand? Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you. God?

Mr. MORGAN. I do.

Mr. CUCCINELLI. I do.

Mr. BENNER. I do.

Mr. McHENRY. I do.

Chairman JOHNSON. Please be seated.

Our first witness is Mark Morgan, who is the Acting Commissioner of Customs and Border Protection. Acting Commissioner Morgan began serving his country as a U.S. Marine and his community in local law enforcement. After completing a 20-year career in the Federal Bureau of Investigation (FBI), he began service in the Department of Homeland Security as the Acting Assistant Commissioner for Internal Affairs before being appointed by President Obama as Chief of the U.S. Border Patrol. He served as Chief until 2017. He returned to DHS as the Acting Director of U.S. Immigration and Customs Enforcement (ICE) in May of this year and began his current role as Acting Commissioner of U.S. Customs and Border Protection on July 7. Mr. Morgan.

**TESTIMONY OF MARK A. MORGAN,¹ ACTING COMMISSIONER,
U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. MORGAN. Good morning. Thank you, Chairman Johnson, Ranking Member Peters, and Members of the Committee. I appreciate the opportunity to be here today to be able to inform the American people the truth about the unprecedented crisis we have experienced along the Southwest Border during fiscal year 2019, as well as the remarkable and noteworthy successes by the current administration and the incredible men and women of the United States Customs and Border Protection. I am honored to speak on behalf of the men and women of CBP who are on the front lines of our Nation's borders defending the rule of law, maintaining the integrity of the immigration system, and protecting the safety and security of this great country, all while simultaneously playing a critical role in ensuring our economic security as well.

If you will recall, earlier this year we sounded the alarm at the border crisis and asked Congress repeatedly to act to fix the loopholes in our broken immigration system and close the gaps driving the crisis. Unfortunately, not a single piece of meaningful legislation has been brought forward to address this crisis. As a result, the country watched as the crisis worsened.

Although we have made great progress, I am here today to respectfully remind this Committee and the American people that there continues to be a humanitarian crisis and, importantly, a national security crisis. In fiscal year 2019, CBP's enforcement actions exceeded 1.1 million nationwide, an increase of 68 percent over the previous year. The total number of apprehensions along our Southwest Border exceeded 978,000, an 88-percent increase over the previous year's apprehensions. The United States Border Patrol alone apprehended more than 473,000 family units, representing the highest number for any year on record. The number of unaccompanied children encountered between the ports totaled more than 76,000, 52 percent higher than any other year. There is no immigration system in the world designed to handle such massive migration numbers, not even the United States.

¹The prepared statement of Mr. Morgan appear in the Appendix on page 568.

Challenging still is the demographics of those illegally entering our Southern Border, as the Chairman discussed. In 2019, 71 percent of all Southwest Border apprehensions came from the Northern Triangle countries, the vast majority being families and unaccompanied children. They are being pulled into the United States by the loopholes in our current legal framework. They know if you grab a kid, that is your passport into the United States, and it was working, all while the human smuggling organizations and cartels exploited them, placed them in life-threatening situations, and treated them as nothing more than a money-making commodity, a multi-billion-dollar scheme.

The impact was real. As the Chairman stated, in May of this year we saw our highest numbers, more than 140,000 apprehensions in a single month. CBP had to divert resources away from their mission-critical duties to care for the children and families. At times, up to 50 percent of Border Patrol resources were pulled off the line to care for the families and children, leaving areas of the border increasingly vulnerable.

Meanwhile, the cartels and smuggling organizations were exploiting those law enforcement gaps, increasing the threat to our national security. Last year, more than 150,000 migrants who illegally entered the United States got away. The transnational criminal organizations (TCOs) are not only exploiting the migrants themselves, but also flooding the United States with illicit narcotics making their way into every town, city, and State in this great Nation. Make no mistake: If you have a methamphetamine in your town or city, it came from the Southwest Border.

In the absence of congressional action, the administration has taken action. Through engagement with the government of Mexico and Northern Triangle countries, we have initiated a network of initiatives, policies, and regulations to stem the flow of migration. Together we are approaching this as the regional crisis that it is, and we have seen incredible success. The last 4 months in fiscal year 2019 we saw an almost 65-percent reduction in the apprehensions, with September marking the lowest number of enforcement actions during the entire year at just over 52,000. By mid-year, CBP was holding almost 20,000 detainees in custody. Now we are averaging less than 3,500 a day in custody. At the height of the crisis, CBP apprehensions at times exceeded 5,000 in a single day. Now we are averaging less than 1,400. We have all but ended catch and release.

But our success at addressing the humanitarian crisis should not overshadow the national security crisis. Last year, CBP officers and Border Patrol agents seized more than 750,000 pounds of illicit narcotics. CBP's air and marine operations (AMO) contributed to the seizure of an additional 285,000 pounds of cocaine. Seizures of the four hard narcotics—fentanyl, heroin, cocaine, and methamphetamine—all increased. Last year, there were more than 68,000 overdose deaths in the United States. We know that methamphetamine has seen significant resurgence as super labs in Mexico are taking over production and flooding the United States with cheaper and purer forms of meth.

Additionally, CBP seized nearly 3,000 weapons, 1,000 gang members, \$75 million of illicit currency, and apprehended 16,000 criminal aliens, and this is just what we caught.

Chairman, I know I am running over time, but if I could just make a couple more comments?

Chairman JOHNSON. Go ahead.

Mr. MORGAN. The apprehension numbers are still at unacceptable levels. Chairman Johnson, as you stated, the former Secretary of DHS, Jeh Johnson, stated, "One thousand apprehensions was a bad day." He was absolutely correct, and that still stands today. I am concerned that the good story I am able to tell this morning regarding the migration crisis has allowed some to take their eye off the ball, but this crisis is not over. Due in part to the judicial activism encountered from the lower courts, we are one bad court decision away from losing a significant ability to continue to mitigate the current crisis.

Additionally, we cannot rely solely on our partner nations to resolve our broken immigration system. To obtain a lasting and durable solution, Congress must act.

As I sit here today as a law enforcement professional, over 30 years of service to this country, I am absolutely perplexed why Congress cannot come together in a bipartisan manner to fix this. We know the cartels and human smuggling organizations are exploiting the migrants as they make their journey here. They are giving up their life savings, turning themselves over and often their children over to the hands of the smugglers, often abused and deprived of adequate food, water, and medical attention during their trip. We know because we averaged 71 hospital visits per day in 2019. Add that up, I think that is roughly over 25,000 hospital visits. They leave them—the smugglers and cartels leave these immigrants in rivers to die. They leave them in open harsh terrain to die, in tractor-trailers to die. The Border Patrol last year conducted 4,900 rescues of immigrants who the smugglers abandoned to die. We also encountered 24 bodies along the Southern Border, including skeletal remains.

I have told this story before, and I think I told it in front of this very Committee, of a paraplegic man whom smugglers threw in the water to avoid apprehension without giving it a second thought.

We know children are being rented and recycled and presented as fake families. Last fiscal year, CBP identified over 6,000 fake family members, impacting over 1,834 juveniles. We had a Honduran man who bought a child for \$80. Why did he do it? Because the loopholes in our system told him and the smugglers made sure he understood you grab a child, that is your passport into the United States.

It is our broken immigration legal framework which is providing an incentive, driving the crisis. We have been asking—I feel like I have been begging—for Congress to act. If Congress continues to fail to come together across the aisle, more children and families will be placed in harm's way by the cartels, and the criminal networks, both domestic and abroad, will continue to negatively impact the public safety throughout this Nation as bad people and drugs make their way into our Nation every day.

We need your help. We are asking for your help. We have been asking for your help. The only winners here by inaction, by not passing meaningful legislation, are the cartels as they continue to thrive and increase their multi-billion-dollar business on the backs of migrants.

Please, join us in doing everything we can to target these smuggling organizations, to target the cartels, and to put them out of business. We can start by eliminating their ability to advance their multi-billion-dollar business on the backs of migrants and at the cost of American lives.

I sincerely thank you for this opportunity, and I am looking forward to addressing any of your questions. Thank you.

Chairman JOHNSON. Thank you for that testimony, and it is certainly my intention and I think hopefully the intention of Members of this Committee to do everything we can. We need the information, so, please, help us get this information. I think you have done a good job of laying out that reality, which is the first step. We need to acknowledge the reality, and then we need to work with real information in terms of how we actually do fix this problem. So, again, I appreciate your testimony.

Our next witness is Ken Cuccinelli. Mr. Cuccinelli is the Acting Director of U.S. Citizenship and Immigration Services (USCIS) at the Department of Homeland Security. From 2010 to 2014, Mr. Cuccinelli served as Virginia's Attorney General (AG), where he led the State's fight against human trafficking. He also previously served in the Virginia Senate from 2002 to 2010. Mr. Cuccinelli.

**TESTIMONY OF KENNETH T. CUCCINELLI,¹ ACTING DIRECTOR,
U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DE-
PARTMENT OF HOMELAND SECURITY**

Mr. CUCCINELLI. Good morning, Chairman Johnson, Ranking Member Peters, and distinguished Members of the Committee. Thank you for the opportunity to testify today regarding the incredible and important work the men and women of U.S. Citizenship and Immigration Services have been doing over the last year.

In fiscal year 2019, USCIS achieved many of President Trump's goals to make our immigration system work better for America. As an agency, we have tirelessly worked hand in hand with our fellow DHS components to answer President Trump's call to address the ongoing crisis at the border.

In the absence of congressional action to close the loopholes that are being exploited and have led to the crisis at the Southern Border, we have taken significant steps to mitigate the loopholes in our asylum system, to combat fraudulent and frivolous claims, and to strengthen the protections we have in place to preserve humanitarian assistance for those who are truly eligible for it.

USCIS had a historic year in fiscal year 2019. I am proud of the agency's work over the fiscal year and want to mention a few of the agency's notable accomplishments.

USCIS adjudicated more than 8.2 million requests for immigration benefits, and we have seen a rising level of complexity in those adjudications as well. This workload represents the full spectrum

¹The prepared statement of Mr. Cuccinelli appear in the Appendix on page 580.

of benefits that our laws provide to those who seek to come to the United States—whether temporarily or permanently—as well as those who seek to become citizens of this Nation. It also includes work continuing to process Temporary Protected Status (TPS) and DACA after courts have interfered with our lawful attempts to terminate these programs, time and resources that should be spent adjudicating lawful immigration benefits instead.

USCIS naturalized approximately 833,000 new citizens last year—the most in more than a decade. USCIS granted lawful permanent residence to 582,000 individuals and completed more than 78,000 affirmative asylum applications. The agency also performed more than 40 million verifications of employment eligibility through the E-Verify program.

On the Southern Border, USCIS felt the impact of the crisis, receiving more than 105,000 credible fear referrals—5,000 more than the previous year and a new record high. To put that in some perspective, just 5 years ago, still on the front edge of what is considered the crisis, 2014, USCIS received approximately 51,000 credible fear referrals, and just 10 years ago, USCIS received approximately 5,000 credible fear referrals. So you can see the nonlinear rise in that measure of the crisis at the border.

During any given week in fiscal year 2019, 150 to 200 of our officers were assigned to process cases arising from the Southern Border, including approximately 40 to 60 assigned to process cases in person at the Southern Border.

USCIS took significant actions that will result in protecting American taxpayers by publishing a Final Rule on Inadmissibility on Public Charge Grounds, a rule that enforces the longstanding law to better ensure that those who come to, or remain in, the United States are self-sufficient and not dependent on public benefits. Public charge has been a part of our immigration statute since 1882.

Unfortunately, DHS was preliminarily enjoined from implementing and enforcing this final rule. The Department of Justice (DOJ) and DHS are vigorously defending the final rule in litigation before Federal courts, and I am confident that, as we continue to do as these things go through courts, we will prevail in that.

USCIS continues to expand our online filing capabilities with over 1.2 million applications filed last year, a 10-percent increase from the previous year. USCIS added four of our important forms for a total of eight now available for online filing with additional forms planned to be added this year.

The men and women of USCIS are working extremely hard to transform a paper-based agency into an electronic agency that takes full advantage of the capabilities of the 21st Century, all while maintaining our records in a secure fashion, even as our threats evolve.

In the coming year, USCIS will continue to use every tool available to us to fulfill President Trump's goals to strengthen our Nation's strained immigration system and alleviate the crisis at our border while continuing to fairly and efficiently adjudicate applications and petitions of those seeking lawful status in the United States.

Thank you again for the opportunity to testify, and I look forward to answering any questions that you might have.

Chairman JOHNSON. Thank you, Director Cuccinelli.

Our next witness is Derek Benner. Mr. Benner is the Acting Deputy Director of Immigration and Customs Enforcement at the Department of Homeland Security. Mr. Benner has served in a variety of positions within ICE since he began his law enforcement career with the U.S. Customs Service in 1991. Before becoming Acting Deputy Director, he served as the Executive Associate Director for Homeland Security Investigations (HSI), a position in which he oversaw the investigative component of ICE that combats transnational criminal organizations. Mr. Benner.

TESTIMONY OF DEREK BENNER,¹ ACTING DEPUTY DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. BENNER. Chairman Johnson, Ranking Member Peters, and distinguished Members of the Committee, thank you for the opportunity to appear before you today to review U.S. Immigration and Customs Enforcement's efforts for fiscal year 2019.

I will echo my colleagues when I say that the unprecedented crisis we saw on the Southwest Border certainly stressed our immigration system to its breaking point, and the administration clearly took necessary actions to address it.

The face of this breaking point, though, is an example which tragically illuminates the humanitarian cost of an unsecure border. It involves an adult Guatemalan male who presented at the border with a minor female whom he fraudulently claimed to be his child. Since law enforcement could not detain as a result of the *Flores* Settlement Agreement, they were released into the interior of the United States. He then moved the minor female to the southeastern United States where he repeatedly sexually abused and beat her on a regular basis until she was, luckily, rescued by law enforcement. Sadly, this is just one of many examples of this fraud, exploitation, and violence associated with this unprecedented crisis.

Like any crisis, we are certainly not measured by the crisis itself but how we respond. I appear before you today proud to represent the men and women of ICE who responded to the call and whose efforts significantly curbed the migrant influx which overwhelmed our borders.

Our response to this crisis was not without consequence. The sustained increase in illegal migration has stretched resources thin across the U.S. Government. The administration was faced this year with responding to the humanitarian crisis at the border at the expense of other vital law enforcement missions.

While the border dominated the headlines, the achievements of ICE over the last year were not defined by the crisis, nor were they limited to the border. Across the country and around the globe, ICE personnel remain steadfast in their critical mission—protecting America from cross-border crime and illegal immigration that threatens national security and public safety. Today I will highlight

¹The prepared statement of Mr. Benner appear in the Appendix on page 585.

ICE's two robust operational directorates responsible for protecting the people of this great Nation.

ICE's Homeland Security Investigations investigates and enforces more than 400 Federal criminal statutes, and we work in close coordination with U.S. Customs and Border Protection and our State, local, tribal, and Federal partners in a unified effort to target transnational organized crime. Over the past year, HSI's special agents arrested over 46,000 individuals, with more than 37,500 of them being criminal arrests, exceeding last year's record by over 3,000 criminal arrests. HSI made 4,000 arrests of gang leaders, members, and associates, including over 400 arrests of MS-13 members.

HSI continued to be at the forefront in the fight against the opioid epidemic and prioritized the investigation, disruption, and dismantlement of TCOs involved in introducing fentanyl, heroin, and other dangerous opioids into the United States.

In fiscal year 2019, HSI and our CBP partners seized over 11,000 pounds of opioids, including over 3,600 pounds of fentanyl, while at the same time making over 2,000 fentanyl-related arrests, which was an increase of nearly 175 percent from the prior year.

HSI also continued to protect our citizens from crimes of exploitation by arresting over 3,600 child predators and over 1,800 human traffickers, while at the same time identifying and assisting more than 1,400 victims of these heinous crimes. These efforts pay immediate dividends when considering the long-term damage these criminals can inflict upon their vulnerable victims.

All of these accomplishments were achieved despite the fact that HSI sent 400 personnel to the border to assist with combating the migrant influx. Agents who would otherwise be investigating criminal organizations were deployed to initiate a rapid deoxyribonucleic acid (DNA) pilot utilizing supplemental appropriations from Congress that allowed for over 10,000 DNA tests at seven locations along the Southwest Border. During this deployment, agents conducted interviews of members of suspected fraudulent family units to disrupt the disturbing practice of children being used as pawns by ruthless human smuggling and trafficking organizations. These efforts resulted in the identification of over 1,000 incidents of family unit fraud and false UAC claims, which also led to over 1,000 criminal prosecutions. As a result of these efforts, HSI has seen a marked decrease in the number of fraudulent family incidents over the past few months, indicating that our joint efforts have impacted the use of the fraudulent families to circumvent our Nation's immigration laws.

ICE's Enforcement and Removal Operations (ERO) ensures the integrity of our immigration system and enhances our national security and public safety by enforcing the Nation's immigration laws in a fair and effective manner. While ERO's targeted immigration enforcement operations focus on the interior of the country, changes in migration flows at the border directly impact nearly every area of the agency's operations, including interior enforcement resources and detention capacity.

As a result of the activity at the border, much of ERO's limited detention capacity has been dedicated to housing aliens arrested by CBP at the border, many of whom are subject to mandatory deten-

tion under U.S. immigration laws. Certainly this shift in resources and ERO's arrest of aliens in the interior decreased by almost 15 percent, to include a decrease in the number of criminal aliens arrested. Simply put, more criminals who would otherwise be in ICE custody or removed from the country are at large in our communities, many of them violent recidivists, as a direct result of the border crisis.

Despite the operational environment of extremely limited resources, ERO has continued to focus on its public safety mission. In fiscal year 2019, ERO officers arrested nearly 140,000 aliens of which 86 percent were convicted criminals or had pending criminal charges.

The safety of the courageous and dedicated men and women of ICE is paramount to our agency. When local jurisdictions refuse to work with us or obstruct our lawful enforcement of the laws that this body has passed, it increases the risk to every community in this country. In just one example from Boulder County, Colorado, ICE officers recently found and arrested a 56-year-old illegal alien who had been released from local custody twice after ICE detainers were ignored. The alien was arrested on local charges and then released, subsequently arrested for felony sexual assault on a child and again released. He was convicted of sexual assault in July of this year and remained at-large until ICE apprehended him in August 2019.

Not only do these policies impact public safety by releasing criminals back onto the streets to reoffend, but also the safety of both the individuals we are arresting and our own officers and agents whose goal it is to effectively enforce the law in a manner that is safest for all parties involved. It is much safer for officers and the public to have ICE apprehending aliens in the secure environment of a jail or police station rather than in a residence in the presence of family and friends.

Unfortunately, despite our collaborative efforts at the border, the crisis does not start and stop at the border. It extends into the interior of the United States. Between the illicit flows of opioids and the mass influx of aliens, almost every community in this country is now a border community. While our partners at CBP appreciate a temporary decrease in the migrant flow, ICE is not so fortunate, as our personnel, particularly our attorneys and deportation officers, will be managing this unprecedented increase in immigration cases for years to come.

An already overburdened immigration system now must deal with the massive influx of aliens and their immigration court proceedings. The ICE ERO docket is now over 3 million, a population managed by a workforce that is short thousands of deportation officers and hundreds of attorneys.

Contrary to some public opinion and in the face of those who wish to attack those of us that represent the men and women of DHS, we remain vigilant enforcing the laws that Congress has passed. The extraordinary men and women of ICE will continue to reinforce our efforts in protecting the communities each of you represent from criminal aliens, terrorists, drug dealers, human trafficking, gang members, and organizations who attempt to exploit our borders.

Thank you again for the opportunity to appear this morning, and I look forward to answering your questions.

Chairman JOHNSON. Thank you, Mr. Benner.

Our final witness is James McHenry. Mr. McHenry is the Director of the Executive Office for Immigration Review (EOIR) at the Department of Justice. Mr. McHenry previously served as Acting Director from May 2017 to January 2018. He previously served in a variety of positions throughout the Federal Government, including an administration law judge (ALJ) for immigration matters, and is a Deputy Associate Attorney General for immigration-related litigation matters. Mr. McHenry.

TESTIMONY OF JAMES MCHENRY,¹ DIRECTOR, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE

Mr. MCHENRY. Mr. Chairman, Ranking Member Peters, and other distinguished Members of the Committee, thank you for the opportunity to speak with you today. As the Director of the Executive Office for Immigration Review at the Department of Justice, I welcome this opportunity to share with you the progress that EOIR has made in adjudicating cases, the continuing challenges it faces, and the overall impact of the unprecedented levels of illegal immigration on its operations.

The primary mission of EOIR is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. Our employees are firmly committed to this mission, they have performed commendably in improving the functioning of our immigration courts, and I am honored to lead them.

After 8 consecutive years of declining or stagnant productivity between fiscal year 2009 and fiscal year 2016, EOIR recently concluded its third consecutive year of increased immigration court case completions. In fiscal year 2019, EOIR completed over 275,000 cases at the immigration court level. This represents the second-highest total in the agency's history, an increase of roughly 80,000 case completions from the prior year 2018, and is almost double the number of cases it completed just 3 years ago. Even accounting for factors such as hiring recency, 150 of our immigration judges completed at least 700 cases last fiscal year, and the average immigration judge completed 708 cases, despite losing 5 weeks to the government shutdown. Perhaps most importantly, this increase in productivity did not lead to an increase in allegations of judicial misconduct.

Although we have solved some of our more intractable problems of the past decade, including hiring, productivity, and technology, our progress is, nevertheless, threatened by challenges emanating from the continued surge of illegal immigration at the Southern Border.

For many years, the immigration court caseload, which currently stands just under 1 million, increased due to factors primarily within EOIR's control, namely declining productivity by immigration judges, insufficient hiring, and a lack of institutional emphasis

¹The prepared statement of Mr. McHenry appear in the Appendix on page 596.

on the importance of completing cases in a timely manner. Those factors, however, are now being successfully addressed. More recent increases to the caseload, though, have been driven largely by external factors.

More specifically, in fiscal year 2019, the Department of Homeland Security filed approximately 443,000 new cases with the immigration courts. That is the highest single year number in EOIR's history.

On average, four out of every five removal cases filed in immigration court will conclude with the alien required to leave the United States through either an order of removal or an order of voluntary departure. This means that statistically the majority of cases may not involve a viable claim that allows an alien to lawfully remain in the United States. However, the presence of these cases on EOIR's already crowded dockets diverts resources from more effectively addressing those claims that are meritorious. In particular, significant increases in recent years in cases involving asylum applications, unaccompanied alien children, credible fear claims, and aliens who fail to appear at their hearings have taxed our resources to an unprecedented degree.

Our immigration system faces numerous challenges, and the current level of illegal immigration is foremost among them. EOIR shoulders significant downstream effects of surges of illegal immigration at the border, and those effects in recent years have placed a marked strain on its resources. To combat these effects, the Attorney General has brought important clarity to the law through case adjudications, and the Department of Justice is actively defending against challenges that would otherwise erode the integrity of our immigration laws. EOIR continues to adjudicate cases fairly and expeditiously at unprecedented levels, but fair and efficient adjudication alone will not resolve the crisis at the border. It is imperative that Congress act as well.

The Department has proposed numerous changes that would strengthen the immigration system as a whole, including consolidating Federal appeals in one circuit, clarifying the so-called categorical approach, and revising statutory language that the Supreme Court has found unconstitutionally vague. We stand ready to continue to work with Congress to strengthen existing laws and to more effectively address the many challenges facing our immigration system today.

Again, thank you for the opportunity to testify, and I would be pleased to answer any questions the Committee may have.

Chairman JOHNSON. Thank you, Mr. McHenry. I am going to actually do some questioning. Normally, I defer, but there are a couple things that popped out of me.

Mr. Benner, you talked about an ERO docket of 3 million. Mr. McHenry, you talked about a 482,000 pending caseload but a little under a million backlog. Can we start reconciling what these numbers are, what they exactly mean?

Mr. MCHENRY. I will defer to Mr. Benner regarding the 3 million ERO caseload, but my understanding is that would include cases that are already final but still have to be processed or reviewed.

On our side, as you know, the caseload has increased almost exponentially over the past decade, but it has increased considerably

in the past 3 years. Most of that increase appears to be driven by changes to the border. Our judges are adjudicating cases as efficiently as they possibly can, and as I alluded to, we have made significant improvements in that area.

Chairman JOHNSON. But, again, the pending caseload or just the most recent ones, that is about half of the million. What are the other half a million?

Mr. MCHENRY. Those are cases that were filed in a prior fiscal year. Those are cases—some of them may have been up on appeal and have come back, or they are cases that are just taking that long to adjudicate.

Chairman JOHNSON. OK. So pending is just this year's cases?

Mr. MCHENRY. No, pending is all cases that were pending as of the end of the fiscal year.

Chairman JOHNSON. OK.

Mr. MCHENRY. They could have been filed that year or filed in a prior year.

Chairman JOHNSON. We have also over time—I think we stopped doing this, administratively closing some of these cases. I think there were hundreds of thousands of those that have been administratively closed over the years. Is that true?

Mr. MCHENRY. There are right now approximately 320,000 cases that are still administratively closed. They are not included in that 1 million total.

Chairman JOHNSON. OK. And then, Mr. Benner, the 3 million cases, those have been adjudicated, so those are off the Department of Justice docket, kind of in your lap. So they have been adjudicated, and they have basically been ordered for removal, correct?

Mr. BENNER. Correct. So it is a little confusing saying “on the docket,” but the 3 million would be inclusive of EOIR numbers plus the added—the delta, the difference there is people that maybe have already been through their adjudication process; they have already been in front of an immigration judge (IJ); they have an order of final removal, a lot of them in absentia. Recently, with the expedited docket of the family units, 86 percent of the final orders of removal were ordered in absentia, meaning no one showed up.

Chairman JOHNSON. Which brings me to the next question. To what extent do we know where the 608,000 people are from that chart.¹ I guess the chart is not up there anymore. Now, again, I am just talking about the children and family units that came in last year. Do we know where those people are? Again, when I was down on the border, I realized they give addresses, but then they do not necessarily show up. So can we comment on the extent that we actually keep track of where they are that have come in illegally?

Mr. BENNER. So, no, we do not, largely, as evidenced by the fact that those families were issued a notice to appear; unless they are put on some form of alternative to detention or monitoring system, we have a higher rate of knowing where people are.

Chairman JOHNSON. But that is a very low percentage that are on alternatives to detention (ATDs), correct?

¹The chart referenced by Senator Johnson appear in the appendix on page 601.

Mr. BENNER. Right. Our capacity I think is around—I want to say 160,000 people in fiscal year 2019 went through the ATD process, whether it was ankle bracelet monitoring, phone check-ins, and other technology. So, no, smaller percentage.

Chairman JOHNSON. Do we have some feel, Mr. McHenry, in terms of the successful asylum claims after the adjudication process? Because I have heard different things, as low as 9 percent, 15, or 20 percent. What is the best information we have in terms of these family units coming in? Again, I am really focusing on that problem in terms of successful asylum claims.

Mr. MCHENRY. The overall asylum grant rate right now is about 20 percent. Historically, it has been below 25 percent for the past 4 or 5 years. The rates for some of the Northern Triangle countries are even lower, but it is basically one out of five at this point.

Chairman JOHNSON. OK. Again, that makes sense to me. People are coming to improve their lot in life. I am highly sympathetic with that, but that is not a valid asylum claim.

I was surprised but not shocked in our threat hearing last week where we had the Director of the FBI, somebody from DHS, and somebody from the National Counterterrorism Center (NCTC). Not one of those three individuals even mentioned gangs in their written testimony. I brought it up, so there was some oral testimony about that.

In light of what we saw in Culiacan with El Chapo's son being arrested and then the Mexican Government just having to give him back because of what the drug cartels did, the murder of the nine Mormons, to what extent is that drug cartel, that kind of violence, how has that already spilled over the border? I would think it is certainly, in terms of gangs, the drug distribution where—again, those people just turn themselves in. They overwhelm the system, which allows a lot of people to get away. I would think those would be gang members, maybe drug kingpins, maybe, people that are going to—so as soon as we put somebody away, they can bring somebody else in to manage an operation.

So can you describe to what extent is that spilling over the border? Are we at a greater risk for that spilling over the border in a more extensive manner? Whoever wants to—Mr. Morgan?

Mr. MORGAN. Sir, I can address a little bit just from a statistics standpoint. I mentioned in my opening in fiscal year 2019 Customs and Border Protection apprehended over 1,200 gang member from 20 different gangs, the majority of them being MS-13. So we know and every local law enforcement in this country knows that the main tool that the drug-smuggling organizations use are gang members to distribute their drugs throughout—

Chairman JOHNSON. That is who you apprehended. Any estimate of how many you did not?

Mr. MORGAN. That is the question that we do not talk about enough. We conservatively, sir, estimated 150,000 individuals illegally into this country that we did not catch. And you just think about—

Chairman JOHNSON. In one year?

Mr. MORGAN. In one year, 150,000. Those are the individuals who are running from the Border Patrol agents, who are trying to avoid apprehension. So the intellectually honest conversation we

need to have is there is a good chunk of those people, that 150,000, are bad people, criminal aliens coming in, gang members coming in. The numbers are staggering, and everybody in this country should be alarmed by that.

Chairman JOHNSON. Do we have within law enforcement—again, I could not get this out of the FBI Director or the witnesses last week. Do we have some estimate of how many gang members are in this country? And is that a growing number? Are we successfully battling that? I could not get that answer. Can anybody here offer one? I am out of time, but—

Mr. MORGAN. I would say I would hand it over to Derek from the domestic law enforcement.

Mr. BENNER. So we do not, sir, have really good statistical reporting on the number of specific types of gang members. So MS-13, for example, we have been focusing on for the last 2 years in particular, and the estimates have been in the range of 8,000 to 10,000 MS-13 members. We have been working with the El Salvadoran national police, though, to try to get a better understanding of the flows both out of the United States through DHS and ICE's removals and investigations, but then also understand what the population is in El Salvador that may be looking to travel.

Chairman JOHNSON. So just a quick response. Is it your sense that this is a growing number, a growing problem? Something that is contained? I just want some kind of sense in terms of the threat level.

Mr. MORGAN. It is not, from our perspective it is not contained, and it is growing. Again, the cartels, specifically the Mexican cartels, they thrive off the gang members as part of their distribution node and network throughout this United States. They need those gang members to infiltrate every town, city, and State in this country to further their drug scheme that they do. So from our perspective, the numbers are not getting better, and, again, we need to talk more, Chairman. You mentioned about the numbers we do not catch. So that is why it is a little bit harder to—

Chairman JOHNSON. We will pick up on that. I am way over time. Senator Peters.

Senator PETERS. Thank you, Mr. Chairman.

Mr. Morgan, effective training ensures that our Border Patrol agents execute their mission with the highest degree of professionalism. Both initial and continuing training sessions I think keep them out of costly and very time-consuming disciplinary investigations. When they are in those investigations, they are not on the line, and that is what we want them to do, is to be on the line and be able to do that professionally. I do not see the need for training as a criticism in any way for the men and women who serve in these critical roles; rather, I think it is a recognition that they are in a very challenging environment and an environment that is highly dynamic as well.

If you look at the Department of Defense (DOD), they do not put folks out into harm's way without extensive training. Certainly when it comes to private industry, they regularly train so their employees understand that is the best way to increase productivity, is having training schedules as well.

So my question to you is: How many hours of training do new Border Patrol agents receive?

Mr. MORGAN. So we have two major topics. One is Custom Border Protection Officers (CBPOs), and then United States Border Patrol agents. So Border Patrol agents get in excess of about 700 hours of training. CBPOs get a little bit less than that, but only because some of the areas' requirement for the Spanish language is not as great. If they are going to be assigned to those ports, then they get additional, I believe, around 80 hours, so that gets them up about equivalent to the Border Patrol. So you are looking at in excess of 700 hours of basic training.

Senator PETERS. That is prior to them going out, they get 700 hours. Is there a continuing education every year for them?

Mr. MORGAN. Yes, sir. It is really two different facets. One is specific to their continuing education specific to their job skills and duties. And then there is another which we have all employees do. A couple of those would be continuing ethics training, annual integrity training. We just developed some new social media training, training on Trafficking Victims Protection Reauthorization Act of 2018 (TVPRA), et cetera.

Senator PETERS. How many agents have faced disciplinary action in the last 2 years, approximately?

Mr. MORGAN. So approximately in the last 2 years—it has been consistent. Around 3,500 have received some form of disciplinary action. That is a long list and it varies, but about 3,500.

Senator PETERS. Would you agree that effective training programs can help reduce the incidence of misconduct and the disciplinary action that takes them off the line?

Mr. MORGAN. Absolutely. I always say, great organizations remain great because they obsess over two things: leadership and training. I will say training is part of that, but I also think that well-thought-out and articulately communicated policies and plans and tools. I think another big area is resiliency training and programs as well that helps that.

Senator PETERS. What enhanced training do the agents receive or reforms did CBP undertake after the widely reported misconduct involving inappropriate social media use and harassment that I know you are aware of?

Mr. MORGAN. Yes, sir. That is a good question. So shortly after that, I am really proud of the CBP team. They really got together across the board, across all different components, and developed a first-time ever social media training package that was mandatory for every single CBP employee, and that course was launched on July 22 of this year, and I am happy to say that we had a 99-percent completion rate of that training.

Senator PETERS. All right. Thank you.

The next question is really for the whole panel. If they would interject, I would appreciate it.

The administration has implemented a number of policy and operational changes that have had significant effects on individuals attempting to seek asylum in the country. These changes include metering and the Migrant Protection Protocols (MPP), which have forced thousands of families and their children to wait in some

pretty dangerous areas in Mexico while they wait for their claims to be heard.

In addition, the administration implemented the asylum ban for non-Mexican migrants who transit through Mexico, rapid deportation pilots, and has allowed Border Patrol agents to do asylum screening interviews.

I want to say first off our most important responsibility is always to keep our Nation safe. That has to be number one, and I know all of you four gentlemen share that. But we can also secure our borders and ensure that families fleeing persecution and violence also have a fair process. I think we can do both. That is something that we can do as a country.

So in light of the many reports detailing kidnappings, sexual violence, extortion, disappearance, and murder targeting at migrants returned to these areas, my question is: Is DHS considering revisiting the Migrant Protection Protocols (MPPs)? Any thoughts about that given some of the things that we have been seeing? Who wants to take that? Mr. Morgan and then anybody else after.

Mr. MORGAN. So, sir, I can speak to that briefly. On the MPP, first I think we have to quickly—what are the reasons why that started? So at one point, CBP, we had over 20,000 individuals in our custody. Our capacity is about 4,000. It was overcrowded. It was unbelievable. Now, and largely because of MPP, we have about 3,500 people in our facilities. The overcrowding issue has all but evaporated.

So now let's look at MPP. What I can tell you the facts are, just recently the Department of State along with the International Office of Migration (IOM), other advocacy groups, as well as Non-Governmental Organizations (NGOs) actually went to Mexico and visited several shelters. Two of those shelters were found to have persistent law enforcement presence. One had National Guard. One was run by a church organization, the other by the government. They were under capacity. They did not have adequate food and medical attention, et cetera.

What we are hearing—so those are some facts. The other facts, IOM, who has a more methodical and structured approach to the information and intelligence they are gathering, because they actually interview the migrants, their MPP, and ask them if they want to voluntarily return. They are saying that if they stay in the shelter environment, those things are not happening. The issue that we are receiving, yet still somewhat anecdotal, is that the issue becomes when the individuals in MPP leave the shelter environment and either go out in the economy on their own and/or what we are seeing is they are reengaging the human-smuggling organizations to then come back and reenter illegally. We have about a 9-percent recidivism rate. The information we are getting is that is the area where they are being exploited again with respect to that.

Senator PETERS. Does anybody else want to add to that?

[No response.]

Do we have data there or are these anecdotal stories? These are certainly very troubling reports that come out, and again, back to our point—and you and I have spoken about this a lot.

Mr. MORGAN. Yes, sir.

Senator PETERS. What is the data to actually support what you are saying?

Mr. MORGAN. So that is the tough part, and I think you are spot-on. We should try everything we can, sir, to get that data. That is what makes this tough, is that the data just is not there because we are dealing with another country. A lot of the information we are talking about is anecdotal. Again, we are trying to go and revisit these shelters. Again, an interagency group of nonprofit organizations were dealing on a daily basis in the field level with our Mexican counterparts to get that data. The data is just not there. Those reports are not being substantiated by the Mexican military or the National Guard, so it is hard for us to get the data.

The data that we can get is that, again, we were at 20,000 in May and now we are down to 3,500 in custody. The data was in May 140,000 apprehensions. Now we are averaging 1,400 a day. A large reason for that is because of MPP, and Mexico has for the first time stepped up and agreed to really meet us as partners and see this as a regional crisis. Because of that partnership, we are seeing our capacity go down. We are seeing our apprehensions go down. That data I have that shows MPP is effective.

Senator PETERS. All right. Thank you.

Chairman JOHNSON. I will just add, I was handed a note by staff. Apparently a group—and I do not know anything about this group, Human Rights First—issued a report and said there were 343 cases of violence or threats out of 57,000 individuals that have gone through the MPP program. So, again, every one is a problem, but 343 out of 57,000 kind of ties into what I think Mr. Morgan was talking about. But, again, I would like to enter that report into the record,¹ and we will check and see the veracity of it.

Mr. MORGAN. And just real quickly—and this is important—anytime anybody, any person that is enrolled in MPP, if they have any concern, any fear at all, all they have to do is come to a port of entry and express that, and they will be given due process.

Chairman JOHNSON. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Gentlemen, thank you. Thanks for the work that you are doing. Thanks for standing up for the laws of the United States. You do not hear enough, and so let me add a voice that I hear a lot in my State, that people are incredibly grateful for the work that is happening, and understand we have laws in our country, and you and your teams are stepping up and enforcing the laws that are on the books. So thank you for doing that.

I listened to some of the current debate nationally, and there is a move to be able to transition DHS to being more like greeters at the border than they are law enforcement at the border, and I am grateful that we have law enforcement folks there and for the stories that you have already told about some of the dangers and the risks that are there.

I have a whole series of questions, but I want to start first talking about with ICE. When I was down at the border last July and talking to CBP folks that were there, I said, “What do you need?”

¹The report referenced by Senator Johnson appear in the Appendix on page 603.

The very first thing that most of them said is, "We need ICE to get more funding. We need ICE help." They are doing soft-sided facilities, which I want to be able to speak to you about, where we are on that status right now. But there was a pretty big push to say that the biggest issue that CBP has is not enough capacity with ICE.

I understand there are some battles. There is a whole group of folks saying they want to abolish ICE or de-fund ICE and not have it at all. But what do you need at this point to greater be able to manage a surge of people coming at us next summer?

Mr. BENNER. So two things, Senator. Number one, detention beds. Detention capacity is a really big issue that affects the whole ecosystem of enforcement of our immigration laws, and as Commissioner Morgan can attest, the funding levels of beds, for example, in fiscal year 2019 was 45,000 and change, including 2,500 beds for family residential centers (FRCs). We were operating at a high of almost 58,000, well over our appropriated levels, and, of course, we do want to live within our means. However, the operational reality in responding to the crisis really forced us to make some decisions about, how to acquire more beds—

Senator LANKFORD. Do you have the capability to be able to surge up numbers if you were given additional funding to be able to do that, as far as the location of facilities that are quality facilities? What they are managing right now on the border when they had up to 20,000 people with 4,000-bed capacity, they are trying to be able to manage, they are not going to just release people on the street, which we thank you for doing that, to be able to help manage what you get. But do you have the capability at ICE to be able to surge facilities up?

Mr. BENNER. Yes, sir, and we will not bring a bed online unless it meets all of our high standards for ICE. So sometimes the challenge in identifying beds is making sure that they meet the standards that we are committed to putting detainees into. I will say one example of some proactive planning would be the ability to have a certain number of beds available and empty in almost like an emergency preparedness posture, so like Federal Emergency Management Agency (FEMA), for example, stores supplies and assets and things that they would need to respond to a natural disaster. We should have 5,000 beds that are ready to go to immediately address a spike in numbers at the border. And so those beds, that is going to cost money, but they are empty and they are available and they are ready to go in the case of an emergency.

Senator LANKFORD. So let me push that cost money. Do you have a guess of what that might on cost? Have you all started looking at that?

Mr. BENNER. I do have estimates, Senator, and I am happy to provide those to you or actually come—

Senator LANKFORD. Glad to be able to talk about it. Let me switch over. The soft-sided facilities that CBP had to do to be able to ramp up, to be able to manage the capacity, they are around \$200 million a year to be able to ramp—that is a pretty big cost on it. But there was no place to be able to go to be able to ramp up. What is the status on those? How many soft-sided facilities do we have? I have visited some of those facilities. They are great fa-

cilities, and they are well managed, they are well run, they are fully stocked. How many of those do we still have and what is the capacity on those soft-sided facilities?

Mr. MORGAN. So we still have multiple facilities independent of what they are. So we have facilities that are designed for families. We have families designed for single adults. And we also have facilities for the temporary hearing facilities to support MPP. It is costing a tremendous amount of money every single month. You and I have talked about this, sir. What I am concerned about, though, is I do not want to look up the definition of insanity in the dictionary and have a picture of a soft-sided facility. We have to change how we do this. I think Acting Deputy Director Benner said it best. We need a surge capacity. We are looking for bipartisan support in the future, to establish permanent hard-sided facilities in strategic locations along the Southwest Border that are multi-use, multi-purpose buildings, that gives us that capability to instantaneously turn on the lights and give us that surge capacity, so, one, we are not in a position we were this year where we did have to release individuals into the cities and towns, tens of thousands on a regular basis, and we are avoiding the definition of insanity of just having to ramp up soft-sided facilities only to tear them down again.

Senator LANKFORD. Mr. Benner.

Mr. BENNER. Senator, so this year ICE had 503,000 book-ins into custody; 75 percent of those were from CBP. So, ERO and ICE and the infrastructure of transportation and all of those efforts were doing their level best to relieve the pressure at the border for Commissioner Morgan's folks.

There is one other aspect, though, here. On the other end of the equation is attorneys that represent the government in immigration court. While it has been hugely helpful to have more judges and more capacity for EOIR, the ICE attorney levels have remained flat. And so with that docket of around a million at any given point, we need to look at the ability to surge our attorney population to service the increase at EOIR. I think that is a hand-in-glove kind of asset—

Senator LANKFORD. They have to all go together.

Mr. BENNER. Yes.

Senator LANKFORD. Mr. Cuccinelli, let me ask you a question. ICE did a raid in Mississippi this past year that got a lot of publicity on that. I think, Mr. Benner, you had mentioned that for ICE in the interior picking up 86 percent of those folks that were picked up had a criminal record already. Is that correct?

Mr. BENNER. Yes.

Senator LANKFORD. OK. So that is important to be able to know, that 86 percent of the folks already have a criminal record on this. When ICE carried out that raid, there were a lot of questions, because E-Verify is mandatory in Mississippi, yet there were hundreds of people there that were not legally present that had employment in Mississippi. So help us understand, in States that have chosen to do E-Verify as mandatory, how we had that many people illegally employed there.

Mr. CUCCINELLI. Thank you, Senator. So in the instance of the operations that ICE executed there in Mississippi at a number of

different locations, you had multiple companies claiming to be participants in E-Verify and they had registered with E-Verify. But when we investigated with our partners at ICE how many of the individuals they had utilized E-Verify on, it literally came to a handful, less than 20, if recollection serves. And you know the hundreds that were identified by ICE as working there illegally.

So we have instituted for the first time a consequence for businesses who participate in E-Verify or nominally participate in E-Verify, but do not comply with the terms of that participation, such as the businesses in Mississippi would be an example, that we will terminate them from the E-Verify program. So for the first time, we are bringing a consequence to those businesses so they cannot shield, as they did—you heard in the press, “Oh, well, we use E-Verify.” Right, we used it once last year on one guy. And they cannot do that any longer.

Senator LANKFORD. OK. Thank you.
Chairman JOHNSON. Senator Portman.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Mr. Chairman. To each of you, thank you for your service, and to the men and women who work for you.

It is a tough job, isn't it? It looks like from the numbers that there has been enormous success in reducing the number of people crossing the border, but we have to put it in perspective. It is still a lot of people relative to the historical numbers. So a 64-percent decrease, as I read it, from May to September. That is positive. In terms of the pressure that you all feel and the infrastructure feels that I saw when I was down there a few months ago, it is better.

I still do not think we quite understand what happened, although, Commissioner Morgan, you talked a little about the Remain in Mexico program and how that is working. Can you tell us a little more about what you think the other factors are, and if you could give what you think the top three reasons are you have seen a reduction, in order? And then also how has the makeup changed? We have seen reports, as an example, that there are fewer Central Americans crossing but more from Mexico. Is that accurate? Do they tend to be family members? I understand some are claiming asylum, so a similar fact pattern. If you could give us just a little sense of what is going on and why.

Mr. MORGAN. I will take the latter first. So the changed demographics, this is key. So the demographics, you are spot-on, have changed. Again, all of last year we had about 71 percent came from the Northern Triangle countries, and the overwhelming majority of those were families and unaccompanied minors. For the first time this year, now what we are seeing is actually Mexican nationals now are taking over a larger percentage than those individuals from Northern Triangle countries, and the specific families and unaccompanied minors numbers, those are drastically being reduced for the first time. That is a game changer. That is very important. It is the families and kids that really task our system because of the broken legal framework.

To your point, hands down the Government of Mexico, their efforts, is number one. I would call Mexico number one and number

two because they are really doing two important things. One is with the formation of the National Guard, over 25,000 troops. They strengthened their Southern Border. They strengthened the border between Mexico and the United States. They have also targeted interior enforcement operations, specifically the human-smuggling routes. In fiscal year 2019, we had 213 large groups, one group of over 1,000, I believe it was in May in El Paso. Last month, we had two. So Mexico is absolutely strengthening interior enforcement and their enforcement on both borders.

The second thing is that they are supporting MPP. I think I described that. That has been a game changer as well.

I would say the third element that is really impacting is what we have done with the Northern Triangle countries. So they have joined us. They are trying to strengthen their interior enforcement as well. They are trying to increase their asylum capacity. They have worked with us and other agencies sitting here to expedite the removal of their individuals through different electronic document verification and other techniques. That has been able to allow us to expeditiously return those individuals.

The last thing real quick that I would say is this administration. This administration has continued to work within the current legal framework and continued to push. Although the judicial activism of lower courts has hindered us time and time again, we are continuing to push.

The asylum Interim Final Rule (IFR) that is out there, that is another significant initiative that we are able to use, too, to expeditiously return individuals.

Senator PORTMAN. As the weather gets warmer, there are fewer people who tend to cross. So I am not suggesting we do not need to have the surge capacity again, but this does give us a little breather. One of the things that I have been concerned about going back to 2015 when we first held hearings about this in one of our Subcommittees is the issue of kids and the lack of communication between the Office of Refugee Resettlement (ORR) at the Department of Health and Human Services (HHS) and DHS. And my sense is that we are doing a little better now, but with this law, I would hope that we can do a better job of providing information about these children to, ORR with two goals: one, just to understand what is happening with these kids, where they are, why they are where they are—and these are children; but, second, to get them reunited with their families. I think it is in everybody's interest, by the way, including the administration, given what happened at a time when there was this surge, and we kind of lost kids.

Can you tell us where we are on that in terms of providing information? You mentioned MPP earlier. The same issue, if you come over as a family unit and the kids get separated some are in the United States, the kids, and the parents are in Mexico. How are we doing there to provide that information? Again, I think this is something that is in everybody's interest, including the children.

Mr. MORGAN. So I will turn to my colleagues on the former question about the ORR issue, but specifically MPP, so we would not return an individual, like a parent, to Mexico and keep the child. So if we decide to separate based on a specific criteria, like, for example, the parent is a convicted murderer, rapist, et cetera, con-

victed of a violent crime, yes, for the safety of the child we would separate that child from the parent. But the child then would be provided to HHS ORR, and then we would keep the parent in our process in the United States.

Senator PORTMAN. OK. We will follow up on that because I do have some additional questions, because we are hearing some other things about MPP and separation and I want to be sure we understand it well.

To the drug issue, I mean, as Director Benner said, I think accurately, we are all border States. Ohio is hit hard with crystal meth right now as an example, and it is coming from one place. It is coming from Mexico. We were already hit hard with opioids coming over, primarily heroin; now we see more fentanyl coming. It used to be almost exclusively from China through our mail system into our communities. Now we see it coming through Mexico. The cartels are very involved in this. There is a lot of money in it.

As the number of crossings has gone down, we get a sense that the drug flow has not. I asked this question of Under Secretary Glawe last week. We did our annual threats to the homeland hearing, and we had the right people there to talk about what was happening in the interior of the United States in terms of the drug threat. He indicated that even though there is a 64-percent decrease in people coming across, there is no a decrease—in fact, an increase—in the flow of drugs. Is that accurate?

Mr. BENNER. Yes, Senator, that is accurate, and I will tell you what our concern is right now. The number of seizures of fentanyl from China are way down, so coming through, the small quantities coming through the mail facilities. But HSI seized over 1,000 pounds more fentanyl in 2019 than we did in 2018. That delta, that increase, is Mexico. The Mexican cartels have jumped into that fentanyl space.

My concern is that the trend of the super labs, which we have seen with the methamphetamine phenomenon for 3 years now, is that the fentanyl problem translates into the same super lab problem that we are facing with methamphetamine.

Senator PORTMAN. I know my time is expiring here, but what do you mean by that precisely? Everybody would be interested, because for us to address this issue properly, we have to understand it better. I hear different things from different law enforcement individuals, but it seems to me, you are right, the Synthetics Trafficking and Overdose Prevention (STOP) Act and other things have helped us with regard to the mail. In other words, this deadliest drug, fentanyl, which kills more people with overdoses than any other drugs—all drugs combined, in fact. But with Mexico, it is going, as I understand it, primarily from China to Mexico. It is not being produced in Mexico at this point. There were two labs, you all think it is shut down by the Mexican authorities. But it is being processed there often into pills. Is that accurate?

Mr. BENNER. Yes, and so what we saw, for example, sir, in Ohio was the domestic pill press operations where an individual orders relatively pure fentanyl from China through the dark web. They produced pills that were killing people.

Senator PORTMAN. Right.

Mr. BENNER. What we are seeing now is the precursor chemicals to make fentanyl essentially going from China to Mexico where it is being processed and assembled in Mexico in bulk. So the number of seizure incidents has gone down, but the amounts and the weights have gone up. So we are seeing bigger shipments, bigger capacity, better quality, higher purity, and much more productivity.

Senator PORTMAN. Yes.

Mr. BENNER. And so it is really Manufacturing 101. This is a supply chain kind of economy, and we can apply the same lessons and the same rules—

Senator PORTMAN. Director Benner, my time is expiring. I would love to follow up with you on this. We met with the Mexican ambassador last week about this and talked about a trilateral approach here—China, Mexico, and the United States—because you still have this flow, as you said, coming in from China.

Can you follow up with me on that and see how we can better target the cartels and the real problem here?

Mr. BENNER. Absolutely. As you know, HSI opened an office in Dayton and in Toledo. We doubled our footprint in Ohio to combat both the meth and—

Senator PORTMAN. We thank you for that.

Mr. BENNER. So we look forward to getting together.

Senator PORTMAN. Yes, thank you.

Chairman JOHNSON. I just want to point out there was an excellent article written by Mary Anastasia O’Grady in the Wall Street Journal just this week where she reports that a Council on Foreign Relations paper says that in 2016, Americans spent nearly \$150 billion on cocaine, heroin, methamphetamine, and marijuana. One hundred and fifty billion dollars. That is fueling these drug cartels, which are operating with impunity, taking over a large number of communities inside Mexico, certainly in Central America. They are untouchable. That impunity bleeds over into other parts of society in terms of extortion. I mean, this is America’s insatiable demand for drugs, \$150 billion. Mr. Cuccinelli?

Mr. CUCCINELLI. I want to seize on your word “impunity,” and we cannot go too deep on it here, but they do not have to. And, you all in your capacity can help make sure that does not happen. I think that is a longer discussion for another day.

There is a major difference between the gangs we are talking about and the cartels we are talking about, and it rises to literally at every level, from the street all the way up to the kind of manufacturing that Mr. Benner is talking about and the nature of the structure of the organizations and what they are willing and capable of doing. They do not have to be able to act the way they are acting if we take unified action as a Nation to counter that.

Chairman JOHNSON. The challenge is in Mexico or in Central America, we have these drug kingpins basically controlling communities, the economies of the communities. Let us say you have a community of 10,000 people that is completely dependent on the drug trade. It is going to be very difficult to take out that drug kingpin, and, by the way, there are plenty of people just standing right behind him.

So this has grown into such a massive problem, which is why it is so difficult for governments in Central America and Mexico to

really deal with it. But, again, the point I am making, this is America's insatiable demand for drugs. But I do have some questions here.

Actually, what I will do is I will defer to Senator Carper before I start my second round. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Gentleman, welcome. Thank you all. It is good to see you.

Let me just begin by saying that my colleagues have heard me say over the years, ad nauseam, everything I do I know I can do better. I think the same is true of all of us. I think one of the keys to making progress is to point toward perfection. Our Constitution starts off with these words: "We, the people of the United States, in order to form a more perfect union . . ." It does not say "perfect union." It says "more perfect." The goal is toward perfection—knowing we are not going to get there, but at least we know where our goal is, and we are going to aim high.

The other thing, we have recently had testimony before the Environment and Public Works (EPW) Committee. A fellow had been nominated to be a top official at the Commerce Department, Rob Wallace from Wyoming, and he is in charge of national parks, he is charge of the Fish and Wildlife Service (FWS). He said in his testimony—he used to work for Malcolm Wallop, a Republican Senator from Wyoming. He is a close friend of John Barrasso. He said in his testimony, he said the most lasting solutions are bipartisan solutions, and what you have are some people on this Committee who are pretty good at that, and we need to have partners in the administration who are pretty good at that as well.

I am bouncing back and forth between this hearing and the hearing in my other committee that deals with nuclear safety, nuclear power plant safety, which is important. As an old naval flight officer (NFO) guy, I chased Russian subs all over the world for many years. I have a real appreciation for nuclear safety.

I want to come back to some of what, Mr. Morgan, I heard you say. I think one of the things—I wrote this down—was "not a single piece of legislation," I think, passed by this Congress to do much to fight this battle. I would just remind us all that we could build a wall from sea to shining sea. I support barriers. I voted for billions and billions of dollars of money for barriers—some walls, in other cases barriers. I voted for money, we have voted for money, billions of dollars, for roads, for vehicles to go along those roads. We have voted to raise the authorization for the number of Border Patrol officials we have, for Customs and Border Patrol. We have, I think, a ceiling of about 21,000 Border Patrol officers right now. I do not think we are up to that ceiling. I think we are at about 20,000. I think we are looking toward raising it again, and we provide the money to fully fund those positions.

I have voted for money for fixed-wing aircraft, for helicopters, for improving our intelligence, intelligence sharing. We have provided money for boats, for boat ramps. We provided money for horses, all kinds of force multipliers. For us to suggest that the Congress has not been a good partner I think is just unfair and I think untrue. I would have us just keep that in mind.

We are pretty good in Delaware with the letter "C"—communicate, compromise, collaborate, and civility. I think we need to keep those words in mind here. I would add another "C"—comprehensive immigration reform, which we passed with bipartisan support led by John McCain and others, 6, 7, or 8 years ago, a two-thirds vote in the Senate. And that is not a cure-all, but that is part of what the solution is. It would be nice to have a President who would be our partner, a fellow who at times talked about the need for comprehensive immigration reform, and then just walks it back. We need him to endorse the idea and engage on that and not walk it back.

The other thing I would say is that the Chairman and I and Senator Peters and I have been down to Central America together a number of times, and I have always been struck by how folks down there live lives of misery. You have seen it, I have seen it. If I lived down there with my family, I would want to get out of there, too, and go to a place where there is better opportunity.

Through the Alliance for Prosperity, as you know, we have put several billions of dollars now into three buckets. One of those buckets is hope and economic opportunity. That is one of the main drivers that cause people to leave those countries. Second is crime and violence. The third is corruption, which is endemic in those countries.

I will just give you a tale of two cities only this is a tale of three countries. You have, on the one hand, El Salvador—a new President, Bukele. You have probably met him; I have met him several times. Impressive guy, former mayor of San Salvador. A young guy, not even 40 years old. A different kind of a generation. He replaced a 75-year-old former leftist guerrilla leader. The money that we are putting in those three buckets in El Salvador is very well used. If you look at the murder rates and crime rates in El Salvador, it is very encouraging.

If you look at what has happened in Honduras, not so encouraging. I have known Juan Hernandez since before he was actually elected President, and he ran for President a second time. The Constitution of that country says you can only be President for 4 years. He ran again, and he had the Supreme Court, which he appointed, basically say their Constitution was unconstitutional so he could run a second time for President. Huge uproar in the country, and it has really just destroyed a lot of the progress that was being made in that country. The thing that is noteworthy there, for the last 2 years, maybe 3 years now, we have not had an ambassador in that country. If we had had an ambassador in that country, somebody like Jean Manes or some other people that are as accomplished as she is and others are, that would have never happened. We would never have allowed that to happen.

I was present, and I think maybe our chairman was actually present, when Jimmy Morales was actually sworn in as President of Guatemala. Very encouraging. He ran on basically a platform that says—what was his motto? Neither a thief nor corrupt. He has just so disappointed, his family has disappointed us, and served as a terrible role model for that country. Now they had a new election, they have new leadership, and we need to be fully engaged through U.S. Agency for International Development (USAID), through our

Ambassadors, in some cases the Senate leader, in some cases President or Vice President, the leaders of those countries do know that we have high expectations. The idea of putting the money that we have put into the Alliance for Prosperity is not money that is just U.S. money. We are leveraging other money. In El Salvador, for every dollar we put in, we leverage seven. They put in money, foundations put in money, private companies put in money, and that is the expectation. We have criteria that measure that they are getting done what they ought to get done, and sadly, our current President basically earlier this year suspended money to all of them. The last thing that Secretary McAleenan did as he was leaving was at least restore the funding that we had authorized and appropriated for the security side to those three countries.

I do not go through this kind of statement when addressing the witnesses. But I just want to say we need to be on the same page where we can. We need to agree on principles and as often as we can on the policies. The idea of suggesting that we have done pretty much nothing is just not fair, and it is just not true.

With that, Mr. Chairman, I yield the floor.

Mr. MORGAN. Mr. Chairman, could I just respond to—

Chairman JOHNSON. Very quickly.

Senator CARPER. No, you have had a lot of time to speak already—

Chairman JOHNSON. We do have a vote called, but—

Senator CARPER [continuing]. Let us let somebody else talk, OK? Thank you.

Chairman JOHNSON. If you want to quick respond, but—

Senator CARPER. I do not.

Chairman JOHNSON. Oh, you do not want them to respond? OK.

So, Mr. Cuccinelli, I have a number of things here, and we do have a vote called, and so we will be closing this hearing out here.

In terms of credible fear, the numbers, you talked about referral. I just have a question. You said 5,000 10 years ago, 51,000 5 years ago. I was surprised that only, 105 this year. We had over 600,000 families, and I thought they were pretty much all claiming credible fear. Why such a low number in comparison to the number of family units and unaccompanied children that came in?

Mr. CUCCINELLI. So the children typically flow right into HHS when they are unaccompanied. They are not typically participating—

Chairman JOHNSON. That is a relatively low percentage of the overall number.

Mr. CUCCINELLI. Of the overall number, that is right. You also do not have the MPP pieces in that credible fear number, so—

Chairman JOHNSON. But, again, that is a pretty small amount, too. That is 57,000 or something like that. So you still have hundreds of thousand versus only 105. Can anybody explain that discrepancy? Again, I would have thought you would have had hundreds of thousands of referrals.

Mr. CUCCINELLI. Right. You would expect perhaps to see the numbers matching at least the family—

Chairman JOHNSON. So, again, why don't they?

Mr. CUCCINELLI. I do not have an answer as to why they do not. I can tell you it is an overwhelming number.

Chairman JOHNSON. Does anybody? Mr. McHenry.

Mr. MCHENRY. The credible fear process is only triggered typically when someone is subject to an expedited removal order. So if they do not go through the expedited removal process, they would not have—

Chairman JOHNSON. So the bottom line is we literally let hundreds of thousands of people in, and they did not even have to claim credible fear?

Mr. CUCCINELLI. That is correct.

Chairman JOHNSON. That is pretty noteworthy. I want people to understand that. We just let people in. They did not even have to claim that unbelievably low standard that, by and large, you said 20 percent, I think under Central America it was lower than that.

Mr. CUCCINELLI. That is correct.

Chairman JOHNSON. People claim that, and they still do not have a valid asylum claim.

Mr. MORGAN. And that is one of the parts, sir, that I was talking about, about the legislation that does need to get passed with respect to this crisis, is the *Flores Settlement Agreement* which says we can only detain people for 20 days. That is what is driving us. There is not time to do the proper vetting that we need to do to complete that process, so we have to release them.

Chairman JOHNSON. Mr. Cuccinelli, do you know of another nation on Earth other than Germany over the couple years with the Syrian migrant flow that grants legal permanent residency to more than a million people per year?

Mr. CUCCINELLI. Absolutely not. We are the most generous Nation in the world by far.

Chairman JOHNSON. Is there anybody that comes even close?

Mr. CUCCINELLI. Not even close.

Chairman JOHNSON. And we do that. On an annual basis we are granting legal permanent residency—

Mr. CUCCINELLI. In the humanitarian space, America is number one way beyond two, three, and four combined.

Chairman JOHNSON. I have had people come up and basically lobby me and say it is just outrageous that we have reduced the number of refugees from 70,000 to 50,000 to now 15,000. I point out to them, well, that is the official total, but you are kind of ignoring the 608,000 people that come here that would basically be refugees as well. I mean, that is the problem with the illegal flow. It absolutely affects the legal flow. Correct?

Mr. CUCCINELLI. Absolutely, and we had almost 80,000 asylum cases last year, same legal standard as refugees. It is the same type of population, but they are landing at our border and on our soil, and so we are shifting resources to contend with that. And that backlog continues to grow. We are at over 340,000 cases and growing.

Chairman JOHNSON. When you said or somebody said 87 percent of the people that we are taking enforcement action against have a criminal record, define "criminal record." Is that criminal because they have overstayed their visas? I mean, define "criminal." Or is that literally—is that felonious, other than immigration felonious behavior?

Mr. BENNER. Yes, it could include felony immigration charges. Typically it is not a visa overstay. It is somebody with a criminal conviction or a pending criminal charge make up that 86 percent of the 140,000 the ERO officers arrested in the interior.

Chairman JOHNSON. It would be nice to separate—again, I am not understating the concern of breaking our immigration laws, but it would be nice to have that split out in terms of felonious behavior. Is it immigration related? Or is it literally rape, assault, or murder? That would be good data to have.

Mr. BENNER. I do have some data, sir, and I am happy to provide this to you after the hearing, the breakout of weapons, assault, sexual—

Chairman JOHNSON. OK, good. We will take that and enter it into the record.

DNA testing, not being done by CBP, that is being done by ICE, correct? Because, we are hearing these children being used time and time again. I cannot help but think of a little girl who gets used as a false family, goes through that dangerous journey once, gets sent back down to Central America, goes through that dangerous journey again. When she gets old enough, is she just then put in the sex trade? But what are we finding in terms of data in terms of false families?

Mr. BENNER. So the rapid DNA was by far the most critical investigative tool for our fraudulent family units that went to the border this spring and this summer. We found with rapid DNA about a 13-to 15-percent hit rate on fraudulent families.

Now, initially, Senator, when we first got there during the height of the crisis, we were showing percentages that were above 20 percent, 25 percent, because the amount of fraud was rampant. Word spreads. The cartels are the best advertisers of what works and what does not. Within a short period of time, it was getting back to the organizations that needed to pivot their operations.

You also mentioned Operation Noble Guardian, and this was the Islamic State of Iraq and Syria (ISIS) efforts to look at kind of the back end of the equation of where fraudulent families were released into the interior, and then the children were separated from those unrelated adults, and they were taken to an airport and flown back to the Northern Triangle. We have identified over 600 children that have been recycled in this methodology.

We interviewed several of the children as they were departing the United States, and some of them had indicated that they had made the trip as many as eight times with separate unrelated adults every time.

Chairman JOHNSON. Again, I always have to point out the 600 are people we catch, and we do not even know how many we do not. We do not understand the magnitude of this problem.

I am running out of time. I just want to make a final point. I want to have Mr. Morgan comment on this. We have a completely unsecure border on our side of the border. But the Southwest Border is 100 percent secure, basically, or close to 100 percent secure on the southern side, right? I mean, nothing is passing—migrants are not passing, drugs are not passing. It is completely controlled, so it is possible if we actually have the will to do so. Mr. Morgan.

Mr. MORGAN. I agree on both fronts. One is that the Mexico side of the border is absolutely 100 percent controlled by the cartels. Nothing passes through without the cartels charging a tax, controlling it and letting that through. So I think you are absolutely 100 percent correct. I think it is important when we talk about securing the border, I think part of the narrative, sir, that we need to get better at, securing the border is not just about the immigration issue. It is also about the humanitarian issue and the national security issue.

Again, drugs are pouring into this country. CBP alone, over 750,000 pounds of drugs, illicit drugs, all for the hard narcotics went up last year; 68,000 deaths due to overdose of illicit narcotics in this country, 70,000 the year before. We absolutely need to secure this border. People are dying every single day because our border is not secure.

Chairman JOHNSON. As long as we have laws that are so easily exploitable by the human traffickers, where they literally can surge in one time in El Paso a thousand people, it is pretty easy for six or seven or a hundred to get through, whether it is to replenish the gang members who are trafficking the drugs, that type of thing. That is a reality we have to recognize.

Mr. MORGAN. That is absolutely right, and when we talk about the security of the Southern Border, we cannot separate the migration flow from the national security side. They are too interconnected. Smuggling organizations, they do not care whether they smuggle humans, bad people, or drugs. They do not care. They are all interconnected.

Chairman JOHNSON. Senator Peters.

Senator PETERS. Thank you, Mr. Chairman.

I would like to talk a little bit about the in absentia cases, if I may. Mr. McHenry, you indicated that "aliens who fail to appear at their hearings have taxed EOIR's resources to an unprecedented degree." I think you testified that orally as well.

So, Mr. Chairman, I am holding a redacted Notice to Appear that was issued earlier this year. I will ask unanimous consent (UC) that this be entered into the record.¹

Chairman JOHNSON. Without objection.

Senator PETERS. Thank you.

It clearly shows that a 7-year-old child, unaccompanied child, was given an NTA without specific hearing dates or locations, thus making it difficult to avoid an in absentia ruling, and you agree that taxes our resources. So my question is: How is a 7-year-old supposed to navigate the immigration court system if basic information is not provided in the form that you give to a 7-year-old child?

Mr. MCHENRY. Senator, I am not familiar with this specific form, and I have not seen it so I cannot necessarily guarantee that it was filed, it was not rejected by the court, or anything like that.

What I can say is that there are regulations that dictate how service must be accomplished on someone who is underage. Typically if someone is under the age of 14, it has to be served on a custodian, a parent, someone else other than the 7-year-old him-or

¹The redacted Notice referenced by Senator Peters appear in the Appendix on page 620.

herself. But, again, I am not familiar with this specific case, so I am not sure exactly what happened.

Senator PETERS. I would like to go through what those procedures are. It may beyond our scope of what we can do right now, but I think our office would like to talk to you as to what are the procedures in place to ensure that hearing notices indeed have the information that a migrant is going to need to have in order to appear.

Mr. MCHENRY. Sure, the regulations do typically spell out what is required, and I notice there has been some litigation on that, as you may be aware, in the past year following a Supreme Court decision. But there are requirements. We also have our own internal guidance for when we reject notices for not having sufficient or correct information.

Senator PETERS. We would like data on all that as well, back to our data-focused hearing here to take a look at that.

The DHS Office of Inspector General reported that participants in the Family Case Management Program (FCMP), which is, as you know, an Alternative to Detention Program, had a 100-percent attendance at court hearings. What are your agencies doing to expand on these programs under the recently provided appropriations that were provided to your agencies? If we could have some comment, either Mr. Morgan or Mr. McHenry. Mr. Morgan.

Mr. MORGAN. So we do not participate in any alternative detentions. That would be ICE or ERO that would handle that.

Senator PETERS. So if you could answer that, please?

Mr. BENNER. Yes, Senator, so it is my understanding—I did not know it was quite 100 percent. I thought it was in the high 90s.

Senator PETERS. That is still pretty good.

Mr. BENNER. Excellent. The challenge with alternative to detention is the limited amount of those resources to keep that monitoring on throughout the pendency of a total hearing process. The FCMP provided for that, so we were continually monitoring and providing that level of engagement that certainly increased the level of participation and showing up for hearings and check-ins at a higher rate.

So my understanding is that that was a pilot and that we are not currently running FCMP at the moment. I want to go back, though, and double-check that so I am providing accurate information and making sure that I am getting this right.

Senator PETERS. We would like that. You say it is a pilot that had in the high 90s, if it was not 100. That seems like a pretty successful pilot, so why isn't the pilot expanded? That is the whole idea of having pilots. If they work, we expand them.

Mr. BENNER. So the challenge, though, is the bandwidth of our ATD Program, which I think was capped in 2019 at about 100,000. Of course, those assets are recycled; as people go off of ATD, they have new people come in. I think I mentioned earlier the number was about 160,000 that had gone through it. But, certainly, it is just a dedication of a lot more resources in a more intensive way. So I would be happy to bring our folks that manage that program and come and talk about it more specifically.

Senator PETERS. We would like that. You have to look at the alternative. Having them not show up also is a tax on the system,

as Mr. McHenry has said. So we have to take a comprehensive look at that, and I look forward to doing that.

Mr. McHenry, our current immigration court backlog, including asylum backlog, has ballooned, I think as you mentioned, to approximately a million cases now. One of the stated causes is a lack of immigration judges and staff, and under our recent border supplemental funding bill, EOIR was appropriated \$45 million for the hiring of 30 immigration judge teams, \$10 million for additional court space, and \$10 million for the Legal Orientation Program.

What is the progress in implementing this funding as of now?

Mr. MCHENRY. I believe we implemented all of it except maybe 0.1 percent by the end of the fiscal year as we were directed to.

Senator PETERS. How many immigration judge teams are on board now with law clerks?

Mr. MCHENRY. There are currently 439 immigration judges. We brought a class on in September, actually.

Senator PETERS. That is the hiring of the additional immigration judge teams? That has all been accomplished?

Mr. MCHENRY. It has. We have another class coming in approximately 2 weeks, and right now we are averaging one new class per quarter. Our formal authorization is 534, so we still have more room to go.

Senator PETERS. You have identified new courtroom spaces as well?

Mr. MCHENRY. Yes, we are expanding courtroom space. We have a plan out through at least 2021 right now.

Senator PETERS. Have any Legal Orientation Program sites been highlighted for expansion under the program?

Mr. MCHENRY. Not to my knowledge, but that is an issue with the contractor and not us. It is up to the contractor to identify locations they think may work best.

Senator PETERS. Very good. Thank you.

Thank you, Mr. Chairman.

Chairman JOHNSON. Just a quick follow-up on that. So if we have 534 times 708 cases per judge per year, that is 378,000 cases we could adjudicate per year. Is that possible? And then I will ask you, Mr. Benner, but we also need ICE attorneys to be able to adjudicate those cases, correct?

Mr. MCHENRY. We certainly believe it is possible to adjudicate them.

Mr. BENNER. Yes, absolutely, Senator. So, looking at the current docket, detained, non-detained, we are about 800 attorneys short in the Office of Legal Representative, and as EOIR expands even to areas where we have no attorneys, so you can imagine the challenge of now finding space for the Office of the Principal Legal Advisor (OPLA) attorneys and then getting folks into that to represent the government in immigration court.

Second, ERO needs deportation officers and staff to facilitate the movement of people in and out of courts as well. So the ecosystem, it needs to be equally resourced in order to be effective.

Chairman JOHNSON. So, Mr. McHenry, would you kind of agree with that, that this was well intentioned, we are plussing up the judges, which, from the standpoint of the number of judges it looks like we may be able to start knocking down this backlog and han-

dling the flow. By the way, I hate to staff up for that kind of flow. That is putting a Band-Aid on a problem. We have to solve the problem. But that being the case, do you agree with Mr. Benner that we really do need the full team? So we need to fund the adjudicators from ICE as well.

Mr. McHENRY. I do. Historically, it has sort of been one or the other. For a while DHS was getting funding and immigration judges were not. More recently, immigration judges have been getting funding, but OPLA attorneys have not. They do go together, as someone said, hand-in-glove.

Chairman JOHNSON. We need to make that a really important point. A lot of things that Senator Peters was just talking about, this whole adjudication process, this is, I think, open for a hearing in and of itself. So I will ask all of you to be thinking about what information, what kind of data, the caseload, the percentage of people getting valid asylum claims. This is data that we absolutely need if we are going to craft legislation to solve that problem.

Again, I want to thank the witnesses for appearing before us, for your thoughtful testimony, and your answers to our questions. I particularly want to thank the men and women that serve with you in your agencies and departments. It is unbelievable to me that law enforcement has come under such attack. It is completely uncalled for. Secretary Kelly, when he was serving as Secretary of Homeland Security, came before us and said, "I am not going to apologize for the men and women of my Department that are enforcing the law. That is their job. It is Immigration and Customs Enforcement. It is border protection. Nobody should apologize for that."

I thank the men and women who, the people I talk to, show a great deal of compassion to those individuals seeking better opportunity. They are trying to deal with an overwhelming problem. As Secretary Kelly said at that point in time, too, "If we do not like the law, it is our responsibility to have the skill and courage to change it." I do not have colleagues up here, but that is the message I have for my colleagues on this Committee. Let us have the skill and courage to admit we have a problem, go through this process, identify the problem, identify the root causes, establish an achievable goal or goals, and then let us craft legislation on a non-partisan basis, because I cannot imagine anybody is satisfied with the current situation. We simply cannot. We can argue about how many legal immigrants should come in here to the extent that that depresses American wages. I mean, those are legitimate concerns. But nobody should be arguing that we should allow this uncontrolled flow with all the human suffering that is associated with it and the billions of dollars we are allowing to flow into the pockets of some of the most evil human beings on the planet, these human traffickers. So, again, thank you, thank you to the men and women you serve.

With that, the hearing record will remain open for 15 days until November 28th at 5 o'clock p.m. for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 11:24 a.m., the Committee was adjourned.]

A P P E N D I X

**Opening Statement of Chairman Ron Johnson
“Unprecedented Migration at the U.S. Southern Border: A Year in Review”
Wednesday, November 13, 2019**

Today's hearing will examine the administration's efforts over the last year to respond to unprecedented migration along our southern border. During the 2019 Fiscal Year, U.S. Customs and Border Protection agents there apprehended a total of 977,509 inadmissible or illegal migrants. The vast majority of these migrants—851,508—illegally entered our country between the ports of entry. Of those, 473,682 were members of a family unit and 76,020 were unaccompanied alien children. Notably, these numbers do not include migrants who entered the country illegally and evaded law enforcement, which U.S. Border Patrol estimated to be over 150,000 additional migrants - but the truth is, no one really knows.

At the peak of the crisis in May, 144,000 migrants were apprehended or deemed inadmissible. By September, that number was reduced to 52,000. Although the illegal flow has decreased from May's daily average of 4,651, the daily average still exceeds 1,400. Former Homeland Security Secretary Jeh Johnson has stated that, during his tenure, 1,000 apprehensions was a bad day. Now, even our best days exceed that mark.

Over the course of the last year, our Committee has examined the growing crisis, heard from the frontlines, and focused on the problems it has created. Having examined these facts and laid out the reality, we have begun to discuss which legal loopholes need to be closed. Unfortunately, Congress has not been able to find a bipartisan solution that can pass.

While Congress remains entrenched in partisan fights, the Department of Homeland Security and Department of Justice have taken actions that significantly reduced the flow of migrants. These include the Migrant Protection Protocols, which requires migrants to remain in Mexico while their asylum applications are processed; the Interim Asylum Rule, which helps to ensure the integrity of our refugee laws; and agreements with Guatemala, El Salvador, and Honduras. I am particularly encouraged to see DHS implementing a program - similar to our bipartisan “Operation Safe Return” proposal - to pilot ways to more efficiently process asylum claims and safely and quickly return those that do not have a valid claim.

Until we get illegal immigration under control, it will be almost impossible to reform our legal immigration system to meet the needs of a growing economy and reflect America's genuine compassion for refugees and asylum seekers. I stand ready to cooperate with anyone who will acknowledge reality and work together in good faith to accomplish that goal.

I want to thank the witnesses here today for their leadership handling the crisis at our southern border, and I particularly want to thank the hardworking men and women of DHS and DOJ, who continue to face an impossible task with compassion and professionalism. I look forward to your testimony.

**U.S. Senate Committee on Homeland Security and Governmental Affairs
“Unprecedented Migration at the U.S. Southern Border: The Year in Review”**

**OPENING STATEMENT OF RANKING MEMBER GARY C. PETERS
NOVEMBER 13, 2019
AS PREPARED FOR DELIVERY**

I'm proud to say that, over the past year, our committee has been able to come together on a bipartisan basis to examine the migration and humanitarian challenges at our borders.

We have found compromise and passed commonsense legislation to address staffing shortages at our borders and ports of entry, strengthen security at our Northern and Southern borders, and ultimately make our country safer.

In June, we came together to unanimously advance my bipartisan bill to strengthen border security and address law enforcement shortages at ports of entry throughout the country.

Last month, the full Senate approved my bipartisan bill to hire more agricultural inspectors and canine units to protect the nation's food supply from harmful contraband.

Last week, our committee approved important legislation led by Chairman Johnson to support the U.S. Border Patrol by hiring new agents and support staff, improving retention, and providing medic training to agents that could save lives.

And just yesterday, I had the chance to see CBP's officers and canines in action at the Detroit Metropolitan Airport and I was stunned to hear just how many seizures they make to keep our country safe.

I'm proud that the men and women of CBP at Detroit Metro are leading the nation when it comes to the interdiction of potentially harmful biological materials.

Detroit Metro has been the number one intercepting port for the last two fiscal years with more than half of all interceptions at ports of entry nationwide.

Detroit Metro has also pioneered training programs that have been deployed nationally with positive results being generated in Boston, Newark, and Dulles.

They also told me that, among all airports nationwide, Detroit Metro is second in the nation for discovery of wood packing material containing potentially harmful pests.

These species pose a direct threat to our forestry and agricultural industries and Michigan's natural beauty.

The CBP officers and canines in Detroit are doing phenomenal work to protect Michiganders and the rest of our country from harm and I'm proud to support their efforts and ensure they have the resources needed to do their jobs efficiently and effectively.

This past year has posed many challenges for our border security professionals. The situation on our Southern border, and throughout Central America, is dynamic. And our border security efforts should reflect that fact.

Often this Administration's border security policies have been short-sighted.

If we're going to successfully address both the conditions at our border and the root causes that are driving migration, then we need a comprehensive approach that looks at data and finds commonsense solutions to address these serious challenges.

I appreciate our witnesses for joining us today and for their commitment to serve our country.

But I also recognize that addressing these border security and humanitarian challenges requires stable and effective leadership.

I am deeply concerned by the lack of Senate-confirmed leaders in nearly all of the top leadership positions at the Department of Homeland Security and I will continue to call on this Administration to nominate qualified leaders for these vacant positions who can gain broad, bipartisan support in the Senate.

The men and women of DHS, and the American people, deserve the stability and accountability that comes from nominating and confirming qualified leaders who can ensure that the Department can carry out its national security missions effectively.

Thank you and I look forward to hearing your testimony today.



TESTIMONY OF

Mark Morgan
Acting Commissioner
U.S. Customs and Border Protection

BEFORE

U.S. Senate
Committee on Homeland Security and Governmental Affairs

ON

“Unprecedented Migration at the U.S. Southern Border: The Year in Review”

November 13, 2019
Washington, DC

Chairman Johnson, Ranking Member Peters, and Members of the Committee, thank you for the opportunity to discuss the tremendous accomplishments of U.S. Customs and Border Protection (CBP) employees during one of the most challenging fiscal years our agency has faced. I will also address the current conditions at the Southwest Border, the strain that these conditions placed on CBP law enforcement resources, and the progress we are making to mitigate the resulting humanitarian and national security crises. I am honored to speak on behalf of the men and women of CBP who are on the frontlines of our nation's border security.

Fiscal Year 2019 in Review

CBP's uniformed personnel – and the thousands of career professionals who support them – keep our country safe every single day. When CBP's officers and agents secure the border, they protect every city, county, and community across the nation.

Alien Apprehensions and Findings of Inadmissibility

From October 1, 2018, to September 30, 2019, the number of individuals apprehended or found inadmissible nationwide totaled 1,148,024, an increase of 68 percent over the previous fiscal year. Nationwide, U.S. Border Patrol (USBP) apprehensions rose 113 percent, totaling 859,501. Individuals found inadmissible by our Office of Field Operations (OFO) totaled 288,523, an increase of approximately three percent over the previous fiscal year. Our Air and Marine Operations (AMO) personnel assisted in the apprehension of 52,036 individuals, an increase of nine percent.

Narcotics, Currency, and Weapons

Narcotics interceptions also increased in Fiscal Year 2019. Border Patrol agents and CBP officers seized nearly 750,000 pounds of dangerous drugs nationwide, including cocaine, heroin, fentanyl, methamphetamines, and marijuana. Seizures of every drug category except marijuana saw meaningful increases.

Cocaine seizures by Border Patrol agents and CBP officers totaled nearly 101,000 pounds, an increase of 73 percent over Fiscal Year 2018. This includes an incident in June at the Port of Philadelphia where 40,000 pounds of cocaine was seized. AMO also contributed to the seizure or disruption of an additional 285,000 pounds of cocaine in the transit zone.

Similarly, USBP and OFO seizures of fentanyl rose 30 percent in Fiscal Year 2019 to reach nearly 2,800 pounds. Methamphetamine interceptions also increased, rising by 23 percent over Fiscal Year 2018 levels to total more than 83,000 pounds. Additionally, Border Patrol agents and CBP officers seized more than 6,200 pounds of heroin, an eight percent increase over Fiscal Year 2018.

CBP also seized more than \$75 million in illicit currency. At ports of entry, CBP officers seized 1,761 inbound weapons, an increase of 300 percent over Fiscal Year 2018. CBP officers also stopped nearly 1,100 weapons during outbound inspections, nearly 60 percent more than Fiscal Year 2018.

Gangs and Criminals

Behind virtually all of these threats are transnational criminal organizations (TCOs). TCOs are highly mobile, maintain sophisticated cross-border networks, and engage in a wide range of organized criminal activities including firearms trafficking, drug smuggling, human smuggling, and human trafficking.

Gangs such as Mara Salvatrucha (MS-13) and the 18th Street Gang have been a regional threat for many years, but they have now proliferated throughout the United States. They have taken full advantage of the migration crisis that has unfolded on our Southwest Border by hiding among these large groups of migrants in order to accompany these groups to enter our country, thereby threatening our population and confronting our domestic law enforcement partners with the daily risk of gang violence and narcotics and weapons trafficking.

In Fiscal Year 2019, Border Patrol arrests of gang members nationwide totaled 976 – up 20 percent from Fiscal Year 2018. Border Patrol agents encountered nearly 4,300 criminal aliens in Fiscal Year 2019, the vast majority of whom had outstanding warrants. At our Nation’s ports of entry, CBP officers encountered more than 12,700 criminal aliens.

Facilitating Lawful Travel and Trade

The threat picture we face on our front line involves more than just national security. It also involves our economic security. Ensuring an efficient, secure supply chain, and safe and efficient international travel is imperative for a strong economy.

In Fiscal Year 2019, CBP processed more than 414 million travelers – a record high. Enrollment in our flagship Trusted Traveler Program, Global Entry, rose by 17 percent, and the program now serves more than 6.7 million travelers.

CBP is transforming the travel process by using facial biometrics as the key to enhance security and facilitate legitimate travel in all modes of transportation. CBP created a robust cloud-based matching service that leverages existing advance passenger information to create a pre-positioned “gallery” of face images from U.S. Government holdings.

Together with travel industry stakeholders and U.S. Government partner agencies, CBP is conducting various facial recognition pilots to facilitate the implementation of a streamlined biometric Entry/Exit system, as mandated by Congress. In the air environment, for example, CBP has successfully implemented facial recognition capabilities at 16 airports, including four Preclearance locations.

CBP also enhances our economic security by facilitating lawful trade while ensuring the safety and security of the global supply chain. CBP officers processed \$2.45 trillion in imports and screened 28.7 million containers, ensuring that the goods coming into the country are safe and legal. CBP also collected approximately \$74.5 billion in duties, taxes, and other fees in Fiscal Year 2019, including more than \$64.8 billion in duties – an increase of nearly 59 percent over the previous fiscal year.

Southwest Border: Humanitarian and National Security Crises

From October 1, 2018, to September 30, 2019, the number of individuals apprehended or found inadmissible by CBP on the Southwest Border reached 977,509, an increase of 87.6 percent over the previous fiscal year. That averages to nearly two apprehensions or findings of inadmissibility every minute of every day for the course of the entire year-long period. In addition, that number represents 85 percent of the 1.14 million individuals apprehended or found inadmissible nationwide in Fiscal Year 2019.

On the Southwest Border, the U.S. Border Patrol's apprehensions totaled 851,508 for Fiscal Year 2019, an increase of 115 percent over Fiscal Year 2018 apprehensions. That number also represents more apprehensions than full fiscal year totals for the previous ten years. During the month of May alone, a total of nearly 133,000 people crossed the border illegally between the ports of entry. In just one 24-hour period, we recorded more than 5,800 illegal border crossings, and on another single day, we had nearly 20,000 persons in custody.

In Fiscal Year 2019, USBP apprehended 473,682 individuals as part of family units, representing the highest number for any year on record and 342 percent higher than the previous year's record of 107,212. The number of Unaccompanied Alien Children (UACs) encountered between the ports totaled 76,020 in Fiscal Year 2019, 52 percent higher than the previous year's UAC total of 50,036. UAC and family units represented 64.5 percent of all individuals apprehended by the Border Patrol at the Southwest Border.

Exacerbating these challenges, USBP began apprehending large groups between ports of entry. 213 large groups, each comprised of more than 100 members (primarily Guatemalan and Honduran families), were apprehended between ports of entry in Fiscal Year 2019. In June, Border Patrol reached an unfortunate record when more than 1,000 migrants illegally entered the United States in the largest single group ever encountered – more than 900 people in family units and more than 60 UACs. Most recently, on October 23, Border Patrol agents in Tucson Sector encountered a group of 103 migrants near Sasabe, Arizona.

At our ports of entry on the Southwest Border, CBP officers encountered 126,001 inadmissible aliens in Fiscal Year 2019 – approximately 2,500 more than the previous fiscal year. Similar to what we have seen between the ports of entry, CBP is experiencing increased numbers of migrants at POEs, including family units and other aliens who arrive without documents sufficient for lawful entry. Large groups of inadmissible aliens, sometimes in the hundreds, arriving at POEs strain our processes and divert our officers from their priority missions, as our officers shift their focus to processing these migrants in a humane and efficient manner.

Reasons for Crisis

For decades, single adult males from Mexico constituted the vast majority of apprehensions made by USBP; however, we have seen a series of demographic changes along the Southwest Border in recent years. The majority of individuals encountered now originate from the three countries of Central America: Guatemala, Honduras, and El Salvador. In Fiscal Year 2019, 71

percent of all Southwest Border apprehensions came from the Northern Triangle, the vast majority of which were family units and UACs. In fact, the number of Northern Triangle migrants has exceeded the number of Mexican migrants in four of the past five fiscal years.

There are numerous “push” and “pull” factors contributing to this irregular migration. Some “push” factors that drive irregular migration from the Northern Triangle region include economic insecurity and limited employment and education opportunities. Rampant violence and gang activity have contributed to this exodus, as has climate change. The United Nations stated last year that lower-than-average rainfall and drier conditions have led to significant crop failures in the Northern Triangle, contributing to food insecurity.¹

As for “pull” factors, the robust U.S. economy and the growing job opportunities it offers undoubtedly appeal to many migrants fleeing Central America. Another “pull” factor is migrants’ pre-existing family ties. As of 2017, there were approximately 3.5 million Central American immigrants residing in the United States.² Roughly one-third of these immigrants are naturalized U.S. citizens, and most of those who received lawful permanent resident status in 2017 did so through family reunification channels.

Ongoing weaknesses and loopholes in our immigration laws serve only to contribute to the crisis. There are three key gaps in our legal framework that CBP has urged Congress to close.

First, the 1997 *Flores* Settlement Agreement requires the government to release alien minors from detention without unnecessary delay, or, if detention is required, to transfer them to non-secure, licensed programs “as expeditiously as possible.” In 2014, in response to the surge of alien families crossing the border, the Department of Homeland Security (DHS) increased the number of family detention facilities. Soon after, the U.S. District Court for the Central District of California reinterpreted *Flores* as applying not only to minors who arrive in the United States unaccompanied, but also to those children who arrive with their parents or legal guardians. The court also stated that ICE’s family detention facilities are not licensed and are secure facilities. These rulings limited DHS’s ability to detain family units for the duration of their immigration proceedings. Pursuant to this and other court decisions interpreting the *Flores* Settlement Agreement, DHS rarely detains accompanied children and their parents or legal guardians for longer than approximately twenty 20 days.

Human smuggling organizations have spread the word that, unlike single adult migrants from Mexico, UACs and families from Central America cannot be swiftly repatriated. Historically, families have been subject to expedited removals, but if they claim credible fear of torture or persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, then DHS has had to release them quickly – generally within 20 days – and

¹ Food and Agriculture Organization of the United Nations, FAO Regional Office for Latin America and the Caribbean. <http://www.fao.org/americas/noticias/ver/en/c/1150344/>

² United States Census Bureau 2010 and the 2017 American Community Surveys. Campbell J. Gibson and Emily Lennon, "Historical Census Statistics on the Foreign-Born Population of the United States: 1850-2000" (Working Paper no. 81, U.S. Census Bureau, Washington, DC, February 2006), available online.

allow them to stay in the United States indefinitely while awaiting immigration court proceedings.

Second, the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, requires that the U.S. government extend certain protections to UACs. Specifically, the TVPRA requires that, once a child is determined to be a UAC, the child must be transferred to HHS within 72 hours, absent exceptional circumstances, unless the UAC is a national or habitual resident of a contiguous country and is determined to be eligible to withdraw his or her application for admission voluntarily (i.e., not a trafficking victim, does not have a fear of return, and is able to make an independent decision to withdraw). UACs from countries other than Canada and Mexico are exempt from the TVPRA provision allowing for the voluntary return of Canadian and Mexican UAC. During Fiscal Year 2019, 79 percent of the UACs apprehended by USBP on the Southwest Border originated in Northern Triangle countries. Therefore, these individuals fall outside the TVPRA expeditious voluntary return framework; cannot avail themselves of a voluntary return provision like UACs from Canada or Mexico; and further encumber HHS' resources to house UACs and DOJ's already-overburdened immigration courts.

Third, CBP has seen a significant increase in the number and percentage of aliens who seek admission or unlawfully enter the United States and then assert an intent to apply for asylum or claim a fear of persecution. This dramatic increase is due to the systemic deficiencies created by the ineffective legal standards, which further strains border security resources, immigration enforcement and courts, and other federal resources.

CBP carries out its mission of border security while adhering to legal obligations for the protection of vulnerable and persecuted persons. The laws of the United States, which are consistent with international treaties to which we are a party, allow people to seek asylum on the grounds that they have a well-founded fear of persecution in their country of nationality (or of last habitual residence, if stateless) on account of their race, religion, nationality, membership in a particular social group, or political opinion. Our laws also prohibit the removal of individuals to countries where they face a likelihood of torture. CBP understands the importance of complying with the law and takes its legal obligations seriously.

CBP has designed policies and procedures based on these legal standards to protect vulnerable and persecuted persons in accordance with these legal obligations. If a CBP officer or agent encounters an alien who is subject to expedited removal at or between ports of entry, and the person expresses an intention to apply for asylum, a fear of persecution or torture, or a fear of being returned to his or her home country, CBP processes that individual for a fear screening with an asylum officer. CBP officers and agents processing aliens for expedited removal do not make credible fear determinations for expedited removal. Nevertheless, economic migration is not, and has never been, a basis for claiming asylum. Those who exploit the low credible fear threshold deprive those who actually qualify for asylum the humanitarian protection they deserve.

CBP continues to raise concerns about fraudulent family units, where people falsely claim familial relationships – particularly to the children they are bringing. In Fiscal Year 2019, CBP

recorded 6,388 individuals as fraudulently claiming family relationships to one or more persons in their groups. Of this number, 4,554 were adults and 1,834 were juveniles.

To be clear, these families, and those posing as families, are generally not concerned with being caught by USBP – they actually turn themselves in, knowing that they will be processed and released with a court date that is scheduled in the future, often times with permission to work while their case is pending, as provided for under current law. Smugglers are exploiting this dynamic to encourage more migration and are benefiting from it financially every day under the current outdated laws that are encouraging this to occur. Closing these loopholes is also essential to protect American communities from MS-13 and other criminal gangs who exploit these catch-and-release policies to expand their criminal enterprise.

Throughout the current crisis, CBP has pursued, and continues to pursue, all avenues within its authority to promptly transfer, transport, process, release, or repatriate those in our custody, including family units and UACs. However, I must again stress that, without Congressional action to address outdated laws and judicial interpretations, member of these vulnerable populations will continue to fall victim to human smugglers and transnational criminal organizations.

Impacts

Impacts to migrants and those they leave behind are devastating: in the violence and lives lost along the journey, and in the flight of generations of youth from the countries of the Northern Triangle. The only people who profit are the TCOs who have added human smuggling to their business models, joining narcotics and weapons smuggling.

The impacts of this crisis on CBP have also been significant. The enormous numbers of migrants who arrived at our Southwest Border in Fiscal Year 2019 pulled CBP's law enforcement resources away from frontline mission-critical duties. For example, CBP temporarily shifted 731 CBP officers away from their duties at ports of entry in other areas of the country to assist Border Patrol agents on the Southwest Border. In addition, more than 3,600 Border Patrol agents from all over the nation have been sent to the Southwest Border to assist fellow agents as part of Operation Secure Line and Operation Southern Support.

Fewer officers at POEs meant that pedestrians, passenger vehicles, and commercial trucks trying to cross the border experienced delays at some ports of entry. Some ports of entry were forced to close travel lanes and curtail weekend cargo processing hours, all affecting the flow of commerce and travel into the United States.

The impacts on the Border Patrol were even more severe. In high-flow sectors, Border Patrol was forced to divert between 40 and 60 percent of its manpower away from the border security mission to provide humanitarian care to families and children. Further, this crisis depleted detention capacity of U.S. Immigration and Customs Enforcement (ICE) and greatly

overwhelmed its resources as ICE detention facilities became overcrowded amidst the crush of migrants seeking asylum.³

CBP's ability to transfer people out of its custody is dependent upon the capacity of our partners. Other agencies have more time than CBP to arrange placement before individuals enter their custody, and immigration courts can spread their dockets out over years. However, CBP must process individuals as they are apprehended and must maintain custody until our partners can accept them.

The influx of family units and UAC during Fiscal Year 2019 resulted in CBP facilities operating at unprecedented and unsustainable occupancy levels. CBP facilities are not designed to shelter families and children; rather, they are designed for single adults. In addition, the short-term holding facilities at ports of entry and Border Patrol stations were designed for neither large volumes of inadmissible persons and apprehensions nor long-term custody after processing is complete.

By way of reference, we generally consider 4,000 detainees to be a high number of migrants in custody. On any given day during the summer of Fiscal Year 2019, CBP held more than 8,000 detainees in custody. On June 3, the number was as high as 19,700 detainees.

Making Progress

Thanks to new programs and partnerships implemented this year, we no longer have a situation in which thousands of migrants are released into the U.S. to await court hearings. Working with the governments of Mexico, El Salvador, Guatemala, and Honduras, we are turning things around.

For example, CBP has enrolled more than 55,000 people in a program called the Migrant Protection Protocols, or MPP, whereby CBP returns many migrants to Mexico to await their immigration hearings. Decisions about whether a person is placed in MPP are made by CBP on a case-by-case basis and the decision-making process includes consultation with medical professionals. Unaccompanied minors should not be sent back to Mexico, according to the program guidelines, but children can be sent back with their parents or legal guardians. Mexico is providing humanitarian protections and even work-authorizations to these individuals during their stay.

The results have been encouraging. From a high of nearly 20,000 in custody in June at the Southwest border, in October we averaged about 3,600 – a number we feel is still too high. The average number of unaccompanied children in custody has been reduced from more than 2,700 in May to only about 100 in October. At border stations, times in custody have also been reduced dramatically, with children moving to well-equipped HHS facilities in less than 24 hours.

³ New York Times, April 22, 2019: "ICE Faces Migrant Detention Crunch as Border Chaos Spills Into Interior of the Country. <https://www.nytimes.com/2019/04/22/us/immigration-detention.html>

MPP remains a cornerstone of DHS' efforts to restore integrity to the U.S. immigration system and relieve the crushing backlog of pending cases. Our nation is more secure because of the program, and migrants with meritorious asylum claims can receive protection in months, rather than waiting in limbo for years.

DHS continues to invest in this critical program despite the potential of adverse court action. Disruption of MPP would negatively impact U.S. foreign relations, risk sparking a renewed humanitarian and security crisis at the border, and most benefit those who seek to profit from human misery.

Another example of progress is reflected by Mexico's deployment of nearly 25,000 troops under its new Mexican National Guard – increasing its presence on Mexico's own southern border and disrupting the transportation hubs and corridors used by human trafficking and human smuggling organizations.

El Salvador, Guatemala, and Honduras are deploying more people and resources to patrol their borders, combat human smuggling, and detect fraudulent documents. We are committed to working with other countries to increase asylum capacity in the region, as part of the United Nation's comprehensive refugee response framework.

September marked the lowest number of enforcement actions during all of Fiscal Year 2019 – 52,546 – down 64 percent from the peak in May of 144,116.

Thanks to emergency supplemental funding received in June, DHS added more than 5,000 beds. DHS also constructed temporary, soft-sided facilities erected specifically to accommodate families and children. This also mitigated the overcrowding of single adults. In addition, CBP has ensured access to showers at major stations, and we have dramatically increased migrants' access to hot meals and age-appropriate meals.

The Department has also increased the presence of certified medical professionals in Border Patrol stations and POEs from approximately 20 to 200. DHS has provided clear policy guidance to make sure that all children are screened by medically trained personnel – agents trained as EMTs as well as contracted medical professionals – while enhancing transportation capacity.

As we began to exceed capacity at our facilities on the Southwest Border, we worked with non-governmental organizations (NGOs) to do everything in CBP's power to release migrants to conditions that were safe and humane – not just to transportation hubs. It must be noted that the logistics of this kind of effort are challenging, and they are not part of our operational training or expertise.

CBP made significant efforts to connect national charities and relief organizations with local shelters and food banks in the most affected areas, including the El Paso, Rio Grande Valley, and Yuma Sectors. We also appreciate the support provided by local government agencies, who have stepped up to provide shelter and other critical services. We remain committed to

continuing to work with NGOs on the Southwest Border, and we are always grateful to them for their cooperation and assistance.

CBP is well aware of reports that migrants returned to Mexico face certain hardships, and this Administration is doing everything it can to work with the Government of Mexico and NGOs, and it also continues to discourage migrant families from making the dangerous journey to the United States from the outset.

Finally, CBP hiring outpaced attrition in Fiscal Year (FY) 2019. In fact, CBP surpassed FY18 hiring by 46 percent, hiring a total of 3,448 law enforcement personnel, compared to 2,357 in FY18.

Our top mission support priority is to recruit, hire, train, retain, and support a world-class, resilient workforce. To that end, in Fiscal Year 2019, our staffing levels for CBP officers increased by 1,034 for a total of 24,511. Our staffing levels for Border Patrol agents increased by 93, for a total of 19,648.

Several dozen improvements to CBP's hiring process, including the establishment of the National Frontline Recruiting Command, implementing an Applicant Care Program and exploring creative ways to use pay and compensation flexibilities have resulted in significant recruitment and hiring gains. We are also actively working to minimize attrition so we can retain experienced agents and officers so essential to securing the border.

Success Stories

CBP officers, agriculture and trade specialists, Border Patrol agents, and Air and Marine interdiction personnel all report for duty every day with a primary focus and a shared purpose: to prevent dangerous people and illicit contraband from entering this country.

In the midst of the crisis on our Southwest Border and under extraordinary, challenging circumstances, our agents and officers all over the country faithfully continued to perform their border security mission.

They continued to intercept dangerous drugs destined for the nation's interior. For example, at a highway checkpoint near Alamogordo, New Mexico, agents recently stopped more than 25 pounds of methamphetamine – worth more than \$850,000 – from reaching its destination in Kansas City, Missouri.

Fentanyl also continues to be a tremendous problem, contributing to 68,000 overdose deaths in the United States in 2018. CBP's seizures of fentanyl rose by 30 percent in Fiscal Year 2019 to total 2,770 pounds. At a pedestrian border crossing in Tucson, Ariz., for example, CBP officers caught a woman smuggling more than four pounds of fentanyl – worth nearly \$50,000 – in packages tied around her waist.

We know that for every seizure of synthetic opioids, especially fentanyl and its analogues, a life is potentially saved. But we also know that, for the vast majority of overdose deaths in this

country, we failed to detect the substance when it entered this country. We take this scourge very seriously.

DHS is bringing all its resources to bear in this fight. For example, in partnership with the Office of National Drug Control Policy, the U.S. Postal Inspection Service, and DHS Science and Technology Directorate, CBP has launched a \$1.5 million global prize competition calling on innovative companies to propose technologies to detect opioids in the international mail pathway. We plan to announce the winner of the competition next month.

Our agents and officers also continued to prevent criminals and gang members from entering the United States. For example, near Lukeville, Arizona, Border Patrol agents apprehended a Honduran national who was an admitted member of the violent MS-13 gang. The man tried to enter the country by mingling with a large caravan of migrants from Central America.

They continued to prevent criminals and gang members – people who wreak havoc in communities all across this country – from fleeing U.S. justice. For example, in Presidio, Texas, CBP officers working outbound operations apprehended a man who was wanted for a double homicide in Durham, North Carolina.

They continued to disrupt the southbound flow of illicit currency and weapons into Mexico. For example, in Hidalgo, Texas, CBP officers intercepted \$715,000 in unreported currency in a commercial bus on its way into Mexico.

And they continued to go above and beyond, rescuing people at risk of drowning in rivers and canals, dying in the desert, or abandoned in locked tractor-trailers. For example, near Eagle Pass, Texas, Border Patrol agents rescued 13 Honduran migrants, including six children, who were struggling in the swift current and deep waters of the Rio Grande River.

In fact, in Fiscal Year 2019, U.S. Border Patrol agents rescued more than 4,900 people on our Southwest Border alone. This kind of heroism was also demonstrated on our Northern and Coastal borders as well. For example, in October 2018, an AMO helicopter crew rescued a stranded hiker trapped on a mountain overnight near Bellingham, Washington. And in September, AMO organized the transport of generators, clothing, and other supplies to the Bahamas to help victims of Hurricane Dorian.

We Need Congress to Act

Although we have seen a decrease in the levels of apprehensions beginning in June of this year compared to previous months, irregular migration remains high, continues to overtax our finite law enforcement resources, and detracts from our national security mission.

We have dedicated every available resource to address the mass migration to our borders, including personnel, technology, infrastructure, and innovative outreach and engagement with international and non-governmental industry partners. However, despite our efforts, the system remains broken. As numerous DHS and CBP witnesses have stated in testimony before this

Committee, Congress must act to close the loopholes in our nation's immigration system that are being exploited daily.

Conclusion

We appreciate the continuous engagement we have had with Congress throughout the crisis on the Southwest Border. While we continue to discuss the best approach to mitigate the crisis and while we continue to work with our international partners on ways to address irregular migration, we urge Congress to take legislative action in support of CBP, our partners, and the rule of law.



**U.S. Citizenship
and Immigration
Services**

WRITTEN TESTIMONY

Of

KENNETH T. CUCCINELLI II

ACTING DIRECTOR
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

FOR A HEARING ON

**“Unprecedented Migration at the U.S. Southern Border:
The Year in Review”**

BEFORE THE

SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS

November 13, 2019

Introduction

Chairman Johnson, Ranking Member Peters, and distinguished members of the Committee, thank you for the opportunity to testify today regarding U.S. Citizenship and Immigration Services' (USCIS) work. The agency's mission is to safeguard the integrity and promise of our immigration system by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values. I can tell you that I am extremely proud of the work and professionalism I see every day by our employees in service to our nation.

In fiscal year (FY) 2019, USCIS achieved many of President Trump's goals to make our immigration system work better for America. As an agency, we have tirelessly worked hand-in-hand with our fellow U.S. Department of Homeland Security (DHS) components to answer President Trump's call to address the ongoing crisis at our southern border. DHS has taken significant steps to mitigate the loopholes in our asylum system, particularly in the absence of congressional action, combat fraudulent and frivolous claims, and strengthen the protections we have in place to preserve humanitarian assistance for those who are truly eligible for it.

FY 2019 Accomplishments

USCIS had a historic year in FY 2019. I am proud of the agency's work over the fiscal year and want to mention a few of the agency's notable accomplishments.

The men and women of USCIS continue to administer our nation's lawful immigration system and process large volumes of applications and petitions. USCIS operates out of approximately 200 offices across the world in a variety of settings, including high-volume service centers, asylum and field offices where interviews take place, application support centers, and headquarters locations.

In FY 2019, USCIS adjudicated nearly 8.2 million requests for immigration benefits. This workload represents the full spectrum of immigration benefits that our laws provide to those who seek to come to the United States—temporarily or permanently—as well as those who seek to become citizens of this nation.

USCIS naturalized approximately 833,000 new citizens in FY 2019 – the most in more than a decade. USCIS granted lawful permanent residence to 582,000 individuals, and USCIS processed more than 2.1 million employment authorization applications.

USCIS received more than 105,000 credible fear referrals and adjudicated more than 78,000 affirmative asylum applications.

The agency also performed more than 40 million verifications through E-Verify. From the start of FY 2019 through August 2019, the backlogs for lawful permanent resident and naturalization cases were reduced by 24 percent and 27 percent respectively.

Crisis Response and Asylum Reforms

USCIS rose to the challenge to address the crisis at the southern border in FY 2019. Absent congressional action to provide targeted fixes to our immigration system, USCIS rushed personnel and resources to our southern border and implemented a number of significant policy changes and reforms designed to help reduce the loopholes in our nation's asylum system that continue to allow for crisis levels of abuse and exploitation of our immigration system.

One of the Department's most significant initiatives is the Migrant Protection Protocols (MPP). MPP was established in January 2019 to restore a safe and orderly immigration process along the U.S. southern border and decrease the number of aliens attempting to game the immigration system. Under MPP, certain aliens attempting to enter the United States from Mexico illegally or without proper documentation are returned to Mexico while they await their removal proceedings.

Additionally, on July 16, 2019, DHS and the Department of Justice published a joint interim final rule to enhance the integrity of the asylum process. The rule, with limited exceptions, bars aliens who enter along the southern border from receiving asylum in the United States if they did not apply for, and receive a denial of, asylum in at least one other country through which they transited.

USCIS' Asylum Division felt the impact of the southern border crisis, receiving more than 105,000 credible fear referrals – a new record high. To put that in perspective in FY 2014, just five years ago, USCIS received approximately 51,000 credible fear referrals and in FY 2009, just ten years ago, USCIS received approximately 5,369 credible fear referrals.

USCIS is executing an ambitious plan to hire 500 new staff members for the Asylum Division by the end of December 2019 to reach authorized staffing levels. During any given week in FY 2019, 150-200 officers were assigned to process cases arising from the southern border, including approximately 40-60 employees assigned to process cases in-person at the southern border. The Asylum Division trained U.S. Border Patrol agents, as part of a pilot program, and utilized specially-trained USCIS officers from outside the Asylum Division to supplement staffing on the southern border and assist with the Asylum Division's credible fear workload. In addition to the credible fear screening workload, the Asylum Division adjudicated more than 78,000 affirmative asylum claims in FY 2019.

Protecting American Taxpayers and Modernizing EB-5

USCIS took significant actions in FY 2019 to protect American taxpayers. On August 14, 2019, USCIS published the Final Rule on Inadmissibility on Public Charge Grounds, a rule that enforces long-standing law to better ensure that those seeking to come to, or remain in, the United States are self-sufficient. With this final rule, DHS defined public charge to mean an alien who receives one or more designated public benefits for more than 12 months in the aggregate, within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months). Under the final rule, USCIS sought to evaluate applications for admission and adjustment of status to better ensure that aliens seeking to come to, or remain, in the United States are able to successfully support themselves through their own capabilities and through the resources of their families, sponsors, and private organizations, rather than relying on public benefit programs supported by taxpayers. Unfortunately, on October 11, 2019, four days

before the rule's effective date, DHS was preliminarily enjoined from implementing and enforcing this final rule. DHS is vigorously defending the final rule in litigation before federal courts, and I am confident that we will prevail.

In July 2019, USCIS published a final rule that made a number of significant changes to the agency's EB-5 Immigrant Investor Program. Under the EB-5 program, individuals are eligible to apply for conditional permanent residence in the United States if they made the necessary investment or are actively in the process of making that investment in a new commercial enterprise in the United States that will result in the creation of at least 10 full-time jobs for qualified U.S. workers. The reforms made to the program this year increase the minimum investment levels to account for inflation over the past three decades and substantially restrict the possibility of gerrymandering targeted employment areas that qualify for a reduced investment amount, ensuring that this incentive is reserved for rural and high-unemployment areas most in need.

Securing the Homeland

Consistent with President Trump's call for enhanced vetting, USCIS plays a key role in safeguarding our nation's immigration system and making sure that only those who are eligible for a benefit receive it. USCIS is vigorous in its efforts to detect and deter immigration fraud, using a variety of vetting and screening processes to confirm an applicant's identity and eligibility. The agency also conducts site visits, interviews applicants, and requests evidence for benefits that offer individuals status in the United States.

In FY 2019, USCIS expanded certain screening procedures to address President Trump's Executive Order 13780, "Protecting the Nation from Foreign Terrorist Entry into the United States." This includes additional vetting for naturalization and lawful permanent resident applicants. USCIS personnel completed more than 8,000 site visits as part of the Targeted Site Visit and Verification Program. Referrals to the Fraud Detection and National Security Directorate (FDNS) from field offices surpassed FY 2018 levels by more than 22%. The primary background screening system for USCIS processed more than 16.5 million screenings, through law enforcement and other federal databases, generating approximately 124,000 automated potential fraud, public safety, and national security notifications requiring further analysis and manual review by USCIS officers. FDNS continued leveraging open source and publicly available social media information to investigate potential fraud, national security, and public safety concerns with approximately 11,420 checks completed.

Modernization

The agency's transition from paper applications to a fully digital experience continues to be an important priority for USCIS. USCIS continues to expand our online filing capabilities. In FY 2019, over 1.2 million applications were filed online, a 10.4% increase from FY 2018. USCIS added four forms during FY 2019 for a total of eight forms available for online filing. USCIS plans to add numerous new forms for electronic filing during FY 2020, including the I-485 (Application to Register Permanent Residence or Adjust Status), I-765 (Application for Employment Authorization), I-131 (Application for Travel Document), I-129 (Petition for a Nonimmigrant Worker), and I-589 (Application for Asylum and for Withholding of Removal.)

USCIS stood up FIRST (Freedom of Information Act Immigration Records SysTem), the federal government's first fully electronic FOIA/Privacy Act request and delivery system that allows users to submit and track FOIA requests and receive documents digitally. In FY 2019, more than 26,000 electronic responses were delivered to individuals with online accounts.

In FY 2019, USCIS expanded the Information Services Modernization Program (called InfoMod). InfoMod saves both applicants and the agency time by enabling hundreds of thousands of applicants who would have otherwise sought an in-person appointment at a USCIS office to have their inquiries answered through our suite of self-help tools online and telephonically. Under InfoMod, applicants still in need of in-person appointment services for certain issues, such as emergency travel documentation, are now able to schedule appointments without being turned away due to lack of availability. The introduction and implementation of InfoMod has been a spectacular success for efficiency both for USCIS employees and for applicants and petitioners seeking benefits, saving hundreds of thousands of applicants and petitioners from having to make unnecessary trips into our offices.

USCIS has continued to expand and enhance the self-help tools available to applicants online and through the agency's contact center with the goal of providing more efficient, timely service. As a result of these improvements, USCIS has seen a 13% increase in the number of individuals using USCIS' digital tools since FY 2018. The number of myUSCIS sessions, USCIS' online account experience, reached over 35.1 million in FY 2019, up 4 million from FY 2018.

Conclusion

In the coming year, USCIS will continue to use every tool available to us to fulfill President Trump's goals to strengthen our nation's strained immigration system and alleviate the crisis at our border while continuing to fairly and efficiently adjudicate applications and petitions of those seeking lawful status in the United States.

Thank you again for the opportunity to testify regarding the agency's accomplishments. I look forward to answering any questions you may have.



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING

"Unprecedented Migration at the U.S. Southern Border: The Year in Review"

BEFORE THE

U.S. SENATE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS

Wednesday, November 13, 2019
9:30 A.M.

342 Dirksen Senate Office Building

INTRODUCTION

Chairman Johnson, Ranking Member Peters, and distinguished members of the Committee.

Thank you for the opportunity to appear before you today to review U.S. Immigration and Customs Enforcement's (ICE) efforts in Fiscal Year (FY) 2019, including the unprecedented crisis we saw on the Southwest Border that stressed our immigration system to its breaking point and the Administration's actions to address it.

ICE's critical mission is to protect America from the cross-border crime and illegal immigration that threaten national security and public safety. As you are aware, ICE has two robust operational directorates responsible for enforcing immigration laws.

As the largest investigative agency within the U.S. Department of Homeland Security (DHS), ICE Homeland Security Investigations (HSI) investigates and enforces more than 400 federal criminal statutes, including those contained in the *Immigration and Nationality Act* (INA) under Title 8 of the United States Code, U.S. customs laws under Title 19 of the United States Code, and general federal crimes under Title 18 of the United States Code, among others. HSI Special Agents use this unique and broad statutory authority to investigate all types of cross-border criminal activity and work in close coordination with U.S. Customs and Border Protection (CBP) and our state, local, tribal, federal, and international partners in a unified effort to target transnational criminal organizations (TCOs).

ICE Enforcement and Removal Operations (ERO) contributes to ICE's critical mission by identifying, arresting, and detaining when necessary, and removing aliens with final orders of removal who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally or otherwise undermine the integrity of U.S. immigration system and border control efforts. ERO enforces the nation's immigration laws in a fair and effective manner, managing aliens detained in its custody or enrolled in an alternative to detention program and removing individuals from the United States who have received a final order of removal.

FY2019 Statistics

While ICE ERO's targeted immigration enforcement operations focus on the interior of the country, changes in migration flows at the Southwest Border directly impact nearly every area of the agency's operations, including interior enforcement resources and detention capacity. This sustained increase in irregular migration has stretched resources thin across the U.S. Government. The Administration was faced this year with responding to the humanitarian crisis at the Southern Border at the expense of other vital law enforcement missions. HSI sent 400 personnel to the border to assist. Agents who would otherwise be investigating Transnational Criminal Organizations (TCOs) and their crimes of opioids, human trafficking, and child exploitation, leveraged their expertise to combat the efforts of the TCOs to exploit the crisis creating fraudulent families, fraudulent juveniles, and the exploitative recycling of children being used as a passport into this country via immigration loopholes. Without legislative help from Congress, these loopholes still exist and still act as pull-factors inciting aliens to abuse our

immigration system. And while to the average American, the crisis appears to be over without media coverage, the reality is that the crisis has just shifted to the interior of our country. An already overburdened immigration system now must deal with the large influx of aliens and their immigration court proceedings for the next several years. The ICE ERO docket is now over 3 million managed by a workforce that is short thousands of deportation officers and hundreds of attorneys. This further has the impact of requiring ICE ERO to re-direct interior enforcement and detention resources to support CBP and impacting both the number of ICE ERO's interior arrests and the criminality of its detained population.

As a result of the activity at the border, much of ICE ERO's limited detention capacity has been dedicated to housing aliens arrested by CBP at the border, many of whom are subject to mandatory detention under U.S. immigration laws, and ICE ERO's arrests of aliens in the interior have decreased. During the last year, ICE ERO saw an almost 15 percent decrease in interior immigration arrests, to include a decrease in the number of criminal aliens arrested, which can be directly attributed to the reallocation of resources to combat the surge at the border. This clearly illustrates the public safety challenges created by the border security crisis, about which ICE has repeatedly warned Congress. However, despite an operational environment of extremely limited resources, ICE ERO has continued to focus on its public safety mission. In FY 2019, as of September 21, 2019, ICE ERO officers arrested 139,189 aliens, of which 89,118 (64 percent), were convicted criminals, and another 30,633 (22 percent) had pending criminal charges at the time of arrest, demonstrating the agency's continued focus on public safety.

In FY 2019, ICE ERO experienced an increase in overall book-ins as well as book-ins resulting from CBP activity at the border. ICE ERO's Average Daily Population (ADP) reached approximately 50,000 in FY 2019, an increase of 17 percent compared to the previous fiscal year. Like ICE ERO's initial book-ins, the increase in overall ADP was primarily driven by CBP activity at the border; during this time period, approximately 74 percent of all initial book-ins to ICE custody resulted from CBP apprehensions¹, while overall apprehensions increased approximately 24 percent compared to FY 2018 and 52 percent compared to FY 2017.

In furtherance of our public safety mission, ERO responded to over 1.6 million inquiries from federal, state, and local law enforcement agencies regarding aliens' immigration status through ICE's Law Enforcement Support Center (LESC). Additionally, ERO conducted 853 foreign Fugitive Alien Removals (FAR) arrests – removable aliens wanted for or convicted of crimes committed abroad and residing within the United States.

In FY 2019, HSI Special Agents arrested over 46,000 individuals, making over 36,000 criminal arrests and over 10,000 administrative arrests. HSI made over 4,000 arrests of gang leaders, members, and associates, including over 400 arrests of Mara Salvatrucha (MS-13) members. Our special agents and investigators have helped take more than 750 firearms off the streets through these criminal investigations over the past year and we hope to build on that success going forward. We will continue to target transnational criminal gangs like MS-13 and results from across the country show that these policies are working and helping make communities safer for our kids, who are frequently targeted for initiation.

¹CBP enforcement efforts represent records that were processed by Border Patrol, Inspections, Inspections-Air, Inspections-Land, and Inspections-Sea.

HSI continued to be at the forefront in the fight against the opioid epidemic and prioritized the investigation, disruption, and dismantlement of TCOs involved in introducing fentanyl, heroin and other dangerous opioids into the United States, which gravely impacts the health of our citizens and the safety of our communities. Due to HSI's inherent nexus to the border, our strategy starts well beyond our borders to prevent dangerous drugs and those engaged in the trafficking and distribution of contraband from reaching our shores. HSI exploits cutting edge technology to investigate and enforce its authorities in the cyber realm and leverage relationships with the financial industry to cut TCOs' access to the regulated financial system while also deploying innovative techniques to limit their access to the burgeoning virtual currency market. Finally, HSI leverages critical partnerships with state, local and federal partners to maximize impact on the operation of TCOs within our communities. In FY 2019, HSI seized over 11,000 pounds of opioids including over 3,600 pounds of fentanyl, while making over 1,900 fentanyl related arrests, which was an increase of nearly 175 percent from FY 2018.

In FY 2019, HSI continued to protect our citizens from crimes of exploitation by arresting over 3,600 child predators and over 1,800 human traffickers, while identifying and assisting more than 1,400 victims of these heinous crimes. These efforts pay immediate dividends when considering the long-term, lasting damage these criminals can inflict upon their young victims. HSI prioritizes the identification and rescue of child victims of sexual exploitation, working to disrupt and dismantle the TCOs responsible for the sexual exploitation of children through cyber-crime and child sex tourism. Knowing that criminal activities involving the sexual exploitation of children routinely cross our physical and virtual borders, HSI continues efforts to increase global collaboration in these investigations.

HSI International Operations

HSI International Operations furthers domestic security through our 78 international offices in 52 countries around the world where we partner with our foreign national and regional police partners to target TCOs and contraband as far away from U.S. borders as we can. HSI utilizes its Visa Security Program (VSP) to assign special agents to diplomatic posts worldwide to conduct law enforcement visa security activities and provide training to State Department officers. HSI has VSP operations in 38 visa-issuing locations in 28 countries around the world. In FY 2019, In FY 2019, HSI's VSP screened 2,377,314 non-immigrant visas. Of these, 87,948 were vetted due to the discovery of derogatory information which resulted in the recommended refusal of 11,974 visa applicants, 4,630 of which had a nexus to terrorism. A total of 8,367 interviews of visa applicants were conducted resulting in 1,081 instances when domestic coordination and/or collateral requests were sent. These activities resulted in the creation of 1,011 Terrorist Screening Database Watchlist nominations.

HSI utilizes its Transnational Criminal Investigative Units (TCIU), which are vetted and trained foreign law enforcement officials working closely with HSI to investigate and prosecute individuals involved in transnational criminal activity. TCIUs are multi-discipline units comprised of foreign law enforcement and prosecutors, customs, immigration, and intelligence officials who are vetted to ensure that shared information and operational activities are not compromised. TCIUs provide operational support to HSI personnel stationed overseas who do not possess law enforcement authorities abroad. HSI works with the TCIUs to conduct foreign

operations and investigations overseas in compliance with host country laws, agreements, treaties, and U.S. mission policies. There are 13 countries with operational TCIUs around the world. In FY 2019, the HSI TCIU program accounted for 1,649 criminal arrests and seized \$24,811,253 in currency, 126,167 pounds of cocaine, 27 pounds of heroin, 29,335 pounds of marijuana, 450 pounds of methamphetamine, 133 weapons, 103,168 rounds of ammunition, 10 aircrafts, 60 vehicles, 3 vessels, \$85,533,858 in counterfeit goods, \$12,260,561 in general merchandise, and \$3,300,000 in real estate.

Through the Biometric Identification Transnational Migration Alert Program (BITMAP), HSI extends the U.S. border by targeting high risk subjects who may be attempting to enter the United States utilizing illicit pathways. BITMAP is managed by HSI in collaboration with the Department of Defense (DOD), the U.S. Department of State, and CBP. Through BITMAP, HSI trains and equips foreign counterparts to tactically collect biometric and biographic data on special interest aliens, gang members and other persons of interest as identified by the host country. When appropriate, HSI shares match information on persons of interest back to foreign counterparts. Foreign partners share this data with HSI, which populates and enhances U.S. government databases. In FY 2019, BITMAP enrolled 67,787 encounters of persons of interest, including 37 biometric enrollments of Known or Suspected Terrorists (KST) and 75 enrollments resulting in a biometric enhancement to a KST record. BITMAP has matched nearly 174 persons to the DOD Biometrically Enabled Watchlist (BEWL) and added 239 new identities to the BEWL. Since its inception in FY 2011, BITMAP has enrolled over 162,000 encounters of persons of interest, including over 494 enrollments of KSTs. BITMAP has matched to over 580 persons to the DOD BEWL and added 1,967 new identities to the BEWL.

Southwest Border Crisis Demographics

The current migration patterns through the Southwest Border have overwhelmed our immigration system this year and are not only characterized by a significant increase in the number of aliens crossing into the United States, but also reflect a major shift in demographics. In the past, the vast majority of those crossing illegally, or arriving without proper documentation, were single male adults from Mexico who could be easily detained or quickly removed. Beginning with the initial surge in FY 2014, there has been a significant increase both family units and unaccompanied alien children (UAC) crossing the Southwest Border, a trend which continues despite the Administration's focused enforcement efforts. These UAC and family units are not able to be easily detained or quickly removed from the United States. Currently, over 60 percent of those seeking to cross the border are family units and UAC, most of them from Guatemala, Honduras, and El Salvador.

In FY 2019, approximately 80,000 UAC and 527,000 members of family units were apprehended at or near the Southwest Border, a staggering increase from FY 2018 when approximately 59,000 UAC and 161,000 members of family units were apprehended at or near the Southwest Border.

Family Fraud Initiative

Human smugglers are currently capitalizing on the trend of fraudulent families crossing the border to enter the United States. The cartels and human smugglers are well versed in our inability to detain family units for the length of time necessary for their cases to be complete, in large part due to the *Flores Settlement Agreement* (FSA) and judicial decisions that

interpret it. This enabled certain aliens, by falsely claiming to be a legal family unit or UAC, to gain entry into the United States, avoid immigration custody, and then never appear for their immigration proceedings. Family units are often released with little or no consequences for their illegal entry.

In response to this crisis, ICE dedicated over 400 HSI personnel to assist in combating this issue. HSI deployed teams of special agents, intelligence analysts, forensic interview specialists, and document fraud examiners to the Southwest Border. These teams interviewed groups suspected of fraudulently claiming familial relationships, specifically a parent-child relationship, in order to facilitate human smuggling activity. As a result, between mid-April and October 31, 2019, HSI identified 653 fraudulent family units, 1,025 fraudulent documents, and presented 1,168 individuals for criminal prosecution, with 1,024 being accepted for prosecution. In a particularly egregious incident investigated by HSI, an adult Guatemalan male presented at the border with a 16 year old minor female who he fraudulently claimed to be his child. Upon being released from custody he took the minor female to the southeastern United States where he raped and beat her on a regular basis until she was rescued. In addition to the fraudulent family incidents, HSI has also been identifying adults who are fraudulently presenting themselves as minors. As of October 31, 2019, HSI has identified 170 adults fraudulently claiming to be minors, of which 143 of those individuals were accepted for prosecution. I would like to take a few moments to discuss two current HSI national operations created to address the fraudulent family issue.

Operation Double Helix: Rapid DNA Testing

From May 6 to 10, 2019, HSI initiated a rapid DNA pilot called *Operation Double Helix* in El Paso and in McAllen, Texas. Both sites were selected for this initiative because they were considered the sectors with the highest family unit apprehensions along the Southwest Border.

Selection of family units for Rapid DNA testing was based on factors such as key observations obtained during interviewing, intelligence gathering, documentary evidence, and any investigative information developed during immigration processing. No DNA information from these tests was stored as these were only presumptive tests to validate a claimed familial relationship. During this operation, written consent was documented for DNA collection and testing, and each alleged parent was served with a privacy notice clarifying that testing was voluntary. HSI coordinated with the DHS Office for Civil Rights and Civil Liberties (CRCL) prior to the pilot to ensure appropriate CRCL protections and concerns were mitigated prior to the operation.

HSI Special Agents sought to gather intelligence and evidence to initiate robust investigations to identify the TCOs perpetuating the exploitation of these children, the production of fraudulent identity documents, and other criminal activity associated with human smuggling efforts. The goal of this operation was to remove children from these dangerous and potentially exploitative situations.

During this initial pilot, a total of 84 family units were DNA tested after providing consent and 16 family units were found to be fraudulent during the testing. About half of the confirmed fraudulent family units were identified prior to DNA testing when the adult alien

recanted their claim of a familial relationship when asked to consent to a DNA test. The teams were also advised by U.S. Border Patrol agents that other subjects within the processing facilities not selected for testing voluntarily came forward and admitted they were part of a fraudulent family, as they learned that DNA testing was being conducted.

Based on the success of this operation, a second pilot of DNA testing—Operation Double Helix 2.0—began on July 15, 2019 utilizing funds provided for in the DHS supplemental funding package. ICE received \$5.5 million in the supplemental for this effort, allowing for over 10,000 DNA tests at seven locations along the Southwest Border. In September 2019, the pilot expanded to three additional locations bringing the total number of testing locations to 10. As of October 31, 2019, Operation Double Helix 2.0 has resulted in 1,613 family units being tested with 207 family units (13 percent) testing negative for a familial relationship. Based on those results, 298 individuals have been presented for prosecution and 168 have been accepted. As a result of the deployments of personnel to the Southwest Border to conduct interviews, detect fraudulent documents and conduct Rapid DNA testing, HSI has seen a dramatic decrease in the number of fraudulent family incidents over the past few months, indicating our efforts have impacted the use of family fraud to circumvent our nation’s immigration laws at the border.

Operation Noble Guardian

In early May 2019, HSI’s Human Smuggling Unit (HSU), in coordination with the CBP National Targeting Center’s (NTC) Counter Network Division, initiated *Operation Noble Guardian*. As previously mentioned, some aliens are exploiting our immigration laws, fraudulently claiming to be family units, avoiding detention and/or prosecution, and are subsequently released after being processed in an expedited fashion.

The NTC assisted HSI in identifying adult aliens and accompanying alien children that entered the United States as alleged family units, where the children subsequently departed the United States via commercial airlines to Northern Triangle countries. As of October 31, 2019, 466 migrant children who were processed as part of a family unit have since departed the United States. HSI is currently investigating these incidents to determine if these children are being used and recycled by adult aliens for the purpose of defrauding the United States.

As of October 31, 2019, HSI has developed 541 investigative referrals that resulted in dozens of HSI interviews and other investigative activities, both domestically and internationally with assistance being provided in Guatemala by HSI’s Transnational Criminal Investigative Unit (TCIU). These efforts have resulted in the development of two significant investigations based out of HSI Tampa and HSI Miami. Both investigations are being supported by the U.S. Attorney’s Offices for the Middle (Tampa) and Southern (Miami) Districts of Florida.

A second line of effort under *Operation Noble Guardian* is to identify and locate these adults after the children have departed the United States. Many of these adults involved in fraudulent family units since their entry into the United States have been identified as absconders from ICE ERO and are now being targeted for arrest and removal from the United States. As of November 1st, ICE has arrested 232 individuals targeted for their involvement in these activities.

Unfortunately, despite our collaborative efforts with CBP, the Southwest Border crisis

doesn't start and stop at the border, it extends into the interior of the United States. If Congress fails to act and make the targeted changes to our immigration laws aliens will continue to exploit the gaps in our legal framework that incentivize families and children to take this dangerous journey, and our immigration system will continue to lack the integrity necessary to eliminate the pull factors these loopholes have created.

Administration Efforts (*Flores*)

In an effort to address the border security and humanitarian crisis this year, the Administration has taken numerous steps to act where Congress has failed. Currently, two of ICE's greatest challenges are limited funding for adult detention, and the inability to detain family units for the length of time necessary for their cases to be adjudicated, in large part due to the FSA and judicial decisions that interpret it.

Pursuant to the orders interpreting the FSA, DHS generally is precluded from detaining family units beyond approximately 20 days. Due to such challenges, since December 21, 2018, ICE has released over 230,000 members of family units² into the United States with instructions to report to a local ERO field office and immigration court.

Due to limitations on DHS's ability to detain family units during removal proceedings, EOIR created an Expedited Docket in 10 cities across the country. This allows those with meritorious asylum claims to have them heard in an accelerated fashion, thereby receiving legal status much more quickly. At the same time, it allows for the issuance of removal orders—and ultimately removal—for those with asylum claims that do not meet the legal threshold. From the beginning of September 2018 through September 2019, EOIR has issued 22,096 orders of removal to aliens on that docket, including those who failed to appear for even their first court hearing. Specifically, 18,166 of these orders—82.2 percent—were issued *in absentia* after the aliens failed to appear. So far, approximately one out of every three new cases filed on these dockets has resulted in an *in absentia* order of removal because the alien failed to appear. Between the continuing influx of family units, the growing immigration court backlog of almost one million cases, and the fact that there are often no consequences for those who fail to depart as ordered, very few members of family units are removed; the push and pull factors that incentivize families to make the dangerous journey to this country must be addressed. To put it into perspective: of the family units from Central America who were apprehended at the Southwest Border in FY 2017, more than 98 percent remain at liberty in the country today.

Sanctuary Jurisdictions

ICE ERO is committed to using its unique enforcement authorities to promote national security, uphold public safety, and preserve the integrity of our immigration system, and works closely with its federal, state and local law enforcement partners in pursuit of this mission. Unfortunately, when a local jurisdiction refuses to collaborate with ICE or obstructs the agency's lawful enforcement activities, it places at risk both public and officer safety, results in the inefficient use of limited resources, and forces ICE to arrest criminal

² Family Unit Release data is current as of October 31, 2019.

aliens at-large in the communities, instead of the secure jail environment.

Every day, ICE places detainees on individuals who the agency has probable cause to believe are aliens removable from the United States and who are currently in federal, state, or local law enforcement's custody after being arrested for a criminal offense. In FY 2019, ICE issued more than 160,000 detainees nationwide. An immigration detainer is a notice to federal, state, or local law enforcement agency that ICE intends to assume custody of an individual upon their release from that agency's custody. ICE uses the detainer form to advise our law enforcement partners that the agency has established probable cause to believe that an individual who has already been arrested and placed in that agency's custody is an alien who is removable from the United States under our immigration laws. The detainer requests that the law enforcement agency notify ICE as early as practicable – at least within 48 hours, if possible – before the subject of the detainer is released from criminal custody and that the state or local law enforcement agency maintain custody of the alien for a period not to exceed 48 hours beyond the time he or she would otherwise have been released from criminal custody. These requests, which ICE serves along with administrative arrest warrants to the detaining agency, are intended to allow a reasonable amount of time for ICE to respond and take the alien into federal immigration custody in a safe and secure environment.

A number of aliens who have been released under these circumstances have gone on to commit additional crimes, including violent felonies, which could have been prevented if ICE had been able to assume custody of these aliens and remove them from the country in accordance with federal immigration laws. In Boulder County, Colorado, ICE officers recently found and arrested a 56-year-old illegal alien who had been released from local custody twice after ICE detainees were ignored. The alien was arrested on local charges in March 2017 and released, was subsequently arrested for felony sexual assault on a child in November 2017 and again released, was convicted of sexual assault in July 2019, and remained at-large until ICE apprehended him in August 2019. Earlier this year, in Mecklenburg County, North Carolina, an illegal alien was arrested for a DUI and was released after ICE's detainer was ignored. In June 2019, the same alien was arrested again – this time for assault by strangulation, assault with a deadly weapon, and another DUI. Despite the severity of these charges, Mecklenburg County again ignored ICE's detainer, and again released him from custody. These are just two of many cases where ICE could have used its unique authorities to remove these aliens from the community and make the public safer but was unable to do so because local jurisdictions did not cooperate with enforcement efforts.

To assist with these critical enforcement efforts, DHS and ICE ultimately need legislation clarifying the legal authority for the decades-old practice of lodging immigration detainees and providing appropriate indemnification for our state and local partners who face litigation simply for working with ICE to protect communities from dangerous criminal aliens.

ICE will continue to look for ways to partner with state and local law enforcement agencies to help ensure public safety nationwide through the 287(g) Program, which has grown from 23 operational partnerships in FY 17 to 76 operational partnerships in FY 19. Additionally, ICE has also developed the Warrant Service Officer Program to provide an opportunity for jurisdictions that seek to cooperate with ICE but who are precluded from honoring ICE detainees as a matter of local policy or state law, and will continue collaborating with these partners to help

ensure that aliens who pose a threat to our communities are not released onto the streets to reoffend.

OPLA Needs

Additional FY 2020 resources are also needed to ensure that ICE's Office of the Principal Legal Advisor (OPLA) can carry out its statutory responsibility to prosecute administrative immigration cases before the Department of Justice's (DOJ) Executive Officer for Immigration Review (EOIR).³ The number of pending cases on the immigration court dockets nears 1 million, with an OPLA attorney responsible for prosecuting each case. In FY 2019, OPLA attorneys obtained over 188,000 orders of removal for a ratio of about 170 cases per OPLA line attorney, representing an increase from the FY 2018 ratio of 156 cases per OPLA line attorney. However, OPLA has not received adequate augmentation of resources given the ballooning docket, which increased by 25 percent in FY 2019. Moreover, during recent budget cycles, Congress has increased the number of funded DOJ immigration judges and support positions at an historic rate, leading to a 74 percent increase in the number of immigration judges on the bench in the past five years, thereby leaving behind the agency that actually prosecutes the cases before those very judges. As but one example, EOIR received funding for 30 more immigration judges and corresponding support staff as part of the Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019 (Pub. L. No. 116-26) passed in June, but Congress did not provide OPLA with any additional resources at that time. Adding immigration judges without a commensurate increase in OPLA attorneys will have little to no impact on the continually expanding non-detained docket. The President's FY 2020 budget requests appropriations to hire 128 additional OPLA attorneys and 41 additional support staff. Without the immediate relief that this modest augmentation of ICE attorneys represents, OPLA will not be able to press immigration judges to effectively manage their dockets, appeal erroneous decisions, and protect public safety by challenging dangerous aliens' requests for release from custody and permanent immigration relief, and ICE's enforcement efforts will fall short of the Administration's objectives in appropriately enforcing federal law.⁴⁵

Conclusion

ICE's critical mission is to protect America from the cross-border crime and illegal immigration that threaten national security and public safety. Our workforce is dedicated to eliminating the TCOs responsible for the manufacture, distribution and sale of illegal and deadly drugs and those who undermine the integrity of U.S. immigration laws and border control efforts. We enforce the nation's immigration laws in a fair and effective manner and we are determined to work with our local law enforcement partners to protect our communities.

³ 6 U.S.C. § 252(c).

⁴ In recognition of OPLA's extreme resource need, separate from the appropriations request, the President's Budget also proposes creation of a Border Security and Immigration Enforcement fund to provide additional mandatory funding sources to meet the Administration's border security and immigration enforcement goals, to include 600 additional OPLA attorneys. See BUDGET OF THE U.S. GOVERNMENT FOR FISCAL YEAR 2020 51, <https://www.whitehouse.gov/wp-content/uploads/2019/03/budget-fy2020.pdf>.

⁵ In addition to representing DHS in proceedings before EOIR, OPLA is responsible for advising ICE leadership and operational personnel on legal matters and addressing an array of other litigation and legal matters facing the agency, which have seen significant increases in tempo and complexity.

ICE continues to work to balance effective law enforcement with the large number of aliens, including family units, arriving at our borders. The current migration patterns through our Southwest Border have overwhelmed our immigration system this year and the Administration has taken numerous steps to address the border security, public safety, and humanitarian crisis by seeking to eliminate or negate the pull factors that incentivize the exploitation of loopholes in our immigration laws.

Funding people, technology, and equipment are especially prudent investments given today's challenges. We believe no other investment will return more operational value on every dollar than the extraordinary men and women of ICE. Removing illicit narcotics, dismantling gangs, and detaining and removing criminal illegal aliens, along with ICE's ability to counter emerging threats constitutes an operational success that continues to yield important results for the Nation.

Thank you again for the opportunity to appear before you today and for your continued support of ICE and its law enforcement mission. I look forward to your questions.



Department of Justice

STATEMENT OF

JAMES MCHENRY
DIRECTOR
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
DEPARTMENT OF JUSTICE

BEFORE THE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

FOR A HEARING ENTITLED
“UNPRECEDENTED MIGRATION AT THE U.S. SOUTHERN BORDER: THE YEAR
IN REVIEW”

PRESENTED ON
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Mr. Chairman, Ranking Member Peters, and other distinguished Members of the Committee, thank you for the opportunity to speak with you today. As the Director of the Executive Office for Immigration Review (“EOIR”) at the Department of Justice (“Department”), I welcome this opportunity to share with you the progress that EOIR has made in adjudicating cases in Fiscal Year (“FY”) 2019, the continuing challenges it faces, and the overall impact of the unprecedented levels of illegal immigration on its operations.

The primary mission of EOIR is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation’s immigration laws. This mission is carried out professionally and diligently every day by EOIR’s approximately 2,000 employees across seven components, including 68 immigration courts and adjudication centers, the Board of Immigration Appeals, and the Office of the Chief Administrative Hearing Officer. EOIR’s employees are firmly committed to this mission, they have performed commendably in improving the functioning of our immigration courts, and I am honored to lead them.

To be sure, EOIR continues to face a significant pending caseload at the immigration court level, one that nearly tripled between FY 2009 and FY 2017 and is now approaching one million cases. Nevertheless, EOIR has made considerable progress in the past twenty-nine months in restoring its reputation as a fully-functioning, efficient, and impartial administrative court system fully capable of rendering timely decisions consistent with due process.

After eight consecutive years of declining or stagnant productivity between FY 2009 and FY 2016, EOIR recently concluded its third consecutive year of increased immigration court case completions. In FY 2019, EOIR completed 275,552 cases at the immigration court level, the second-highest total in its history, an increase of roughly 80,000 case completions from FY 2018, and nearly double the number of cases EOIR completed just three years ago. Even considering the government shutdown, hiring recency, supervisory status, and any relevant

factors under the collective bargaining agreement, 150 immigration judges completed at least 700 cases each in FY 2019, and 38 immigration courts nationwide had at least one immigration judge who completed that number. Excluding new immigration judges (those hired in the past fiscal year), immigration judges who were supervisors during the entire fiscal year, immigration judges on detail or otherwise not adjudicating cases for a significant period during the fiscal year, and immigration judges who retired, separated, or otherwise left EOIR prior to September 2019, the average immigration judge completed 708 cases in FY 2019, despite losing five weeks to the government shutdown. Perhaps most importantly, the increases in productivity did not lead to increased allegations of judicial misconduct. To the contrary, despite notable increases in the number of immigration judges, the number of hearings, and the number of completed cases, the number of complaints against immigration judges fell for the second consecutive fiscal year.

These results are a testament to the professionalism and dedication of our immigration judge corps. These results unequivocally prove that immigration judges have the integrity and competence required to resolve cases in the timely and impartial manner that is required by law.

EOIR has also reduced the time it takes to hire a new immigration judge from an average of 742 days to as little as 195 days, a reduction of 74 percent. As a result, EOIR has hired more immigration judges since January 20, 2017, than it hired in the seven prior fiscal years combined. As of September 30, 2019, EOIR had 442 immigration judges onboard with another class of new judges expected to begin working later this month.

EOIR is also striving to modernize and digitize its critical information systems. EOIR's Office of Information Technology has worked tirelessly to finally make a fully electronic filing and case management system a reality after years of little to no progress. In 2018, EOIR piloted its new electronic filing system, EOIR Courts and Appeals System ("ECAS"), at five immigration courts and the Board of Immigration Appeals with encouraging results. Over 40,000 electronic case files have been created, and nearly 16,000 attorneys have registered to use ECAS so far. EOIR is beginning the nationwide rollout of ECAS this week, and it will proceed in phases over the next two to three years.

Each of these accomplishments is critical to EOIR's continued success as it addresses the pending caseload, and EOIR has solved some of its most intractable problems of the past decade regarding hiring, productivity, and technology. But, EOIR's progress is threatened by challenges emanating from the continued surge of illegal immigration along the southern border.

For many years, the immigration court caseload increased due to factors primarily within EOIR's control, namely declining productivity by immigration judges, insufficient hiring, and a lack of institutional emphasis on the importance of completing cases in a timely manner. Those factors are now being successfully addressed. More recent increases to the caseload, however, have been driven largely by external factors, including increased numbers of asylum claims in immigration proceedings and increased law enforcement efforts by the Department of Homeland Security ("DHS").

More specifically, in FY 2019, DHS filed more than 443,000 new cases with the immigration courts, which is the highest number in a single year in EOIR's history. Statistically,

the vast majority of these cases may not involve a viable claim allowing an alien to lawfully remain in the United States, but their presence on EOIR's already-crowded dockets diverts resources from more effectively addressing those claims that are meritorious. In particular, significant increases in recent years in cases involving asylum applications, unaccompanied alien children ("UAC"), credible fear claims, and aliens who fail to appear at their hearings have taxed EOIR's resources to an unprecedented degree.

Nearly half of EOIR's pending caseload, approximately 482,000 cases, involves applications for asylum, and EOIR received over 200,000 asylum applications in FY 2019, its highest total ever. Compared to FY 2013, asylum applications received in immigration proceedings have increased by over 165,000, whereas asylum grants have increased by only slightly over 9,000. Even considered as a percentage, the increase in applications has not been accompanied by an increase in meritorious claims; to the contrary, only 20% of asylum applications were granted in FY 2019, compared to nearly 25% in FY 2013. Moreover, although Congress established a clear 180-day deadline for the adjudication of asylum claims absent exceptional circumstances, the sheer volume of claims means that goal is rarely achieved.

The number of credible fear review cases heard by immigration judges doubled from FY 2018 to FY 2019 and has increased 600% since FY 2013. This increase, too, has not been accompanied by an increase in meritorious claims, as the affirmance rate of a negative credible fear determination has remained at 72% or higher for nearly two decades. Further, many aliens who successfully pass the credible fear screening never actually file for asylum after they enter the United States, yet their cases take important docket space away from other, potentially meritorious cases.

The number of pending UAC cases has increased by over 1,200% since FY 2013 and currently exceeds 90,000. Over 30% of those cases have been pending for more than three years. Only 431 UAC cases resulted in a grant of relief in FY 2019, and less than 20% of UAC cases end with an order of relief or termination.

The number of *in absentia* removal orders resulting from an alien's failure to appear at a hearing nearly doubled in FY 2019 from FY 2018, and roughly 45% of all non-detained cases completed in FY 2019 ended with an alien not appearing for a court proceeding. Further, in FY 2019, EOIR began tracking "family unit" cases at certain court locations, and over 25% of those cases have ended with an *in absentia* order of removal.

On average, four out of every five removal cases filed in immigration court will conclude with the alien required to leave the United States, through either an order of removal or voluntary departure.

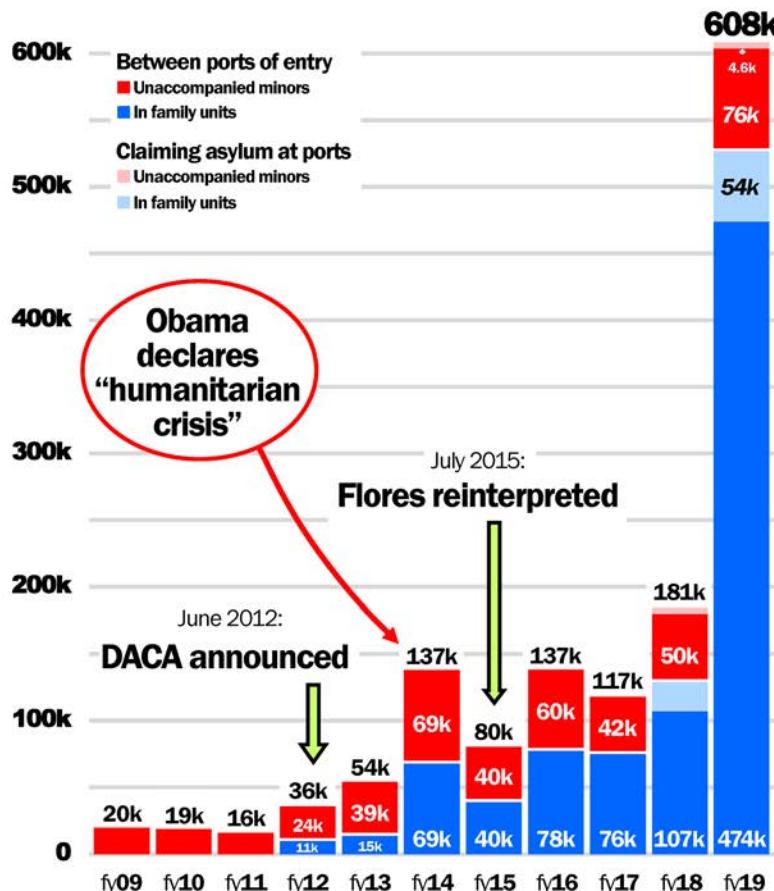
Our immigration system faces numerous challenges, and the current level of illegal immigration is foremost among them. EOIR shoulders significant downstream effects of surges of illegal immigration at the border, and those effects in recent years have placed a significant strain on its resources. To combat these effects, the Attorney General has brought important clarity to the law through case adjudications, and the Department of Justice is actively defending against challenges that would otherwise erode the integrity of our immigration laws. EOIR

continues to adjudicate cases fairly and expeditiously at unprecedented levels, but fair and efficient adjudication alone will not resolve the crisis at the border—it is imperative that Congress act as well. The Department has proposed numerous changes that would strengthen the immigration system as a whole, including consolidating federal appeals in one circuit, clarifying the so-called categorical approach, and revising statutory language that the Supreme Court has found unconstitutionally vague. We stand ready to continue to work with Congress to strengthen existing laws and more effectively address the many challenges facing our immigration system today.

I would be pleased to answer any questions the Committee may have.

MINORS AND FAMILIES

APPREHENDED AT S.W. BORDER OR CLAIMING ASYLUM AT PORTS



Customs and Border Protection.
Federal fiscal years (Oct.-Sept.). Minors and families from all countries.



Southwest border apprehensions /asylum claims

Apprehensions between ports of entry and claims of asylum at ports of entry. Southwest border only; individuals from any country.

Year to date

	365 day as of 9/30/19	365 day daily avg:	Approx # of children:	365 day daily avg:
Minors	80,634	221	80,634	221
Families	527,112	1,444	@ 50% = 263,556	722
subtotal	<u>607,746</u>	<u>1,665</u>	<u>344,190</u>	<u>943</u>
Single adults	368,812	1,010		
total	<u>976,558</u>	<u>2,676</u>		
fy2018 total: 521,090 1,428 365 day average				

Most recent month:

	September	30 day daily avg:	May	Approx # of children:	30 day daily avg:	May
Minors	3,543	118	383	3,543	118	383
Families	22,010	734	2,859	@ 50% = 11,005	367	1,430
subtotal	<u>25,553</u>	<u>852</u>	<u>3,242</u>	<u>14,548</u>	<u>485</u>	<u>1,812</u>
Single adults	26,919	897	1,410			
total	<u>52,472</u>	<u>1,749</u>	<u>4,651</u>			

Source: Customs and Border Protection





American ideals. Universal values.

REPORT: OCTOBER 2019

Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy

In September 2019, the Trump Administration's policy of returning asylum seekers to Mexico, which it farcically refers to as the "Migrant Protection Protocols" (MPP), entered a new phase. The Department of Homeland Security (DHS) expanded this flawed program, sending men, women and children from Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Venezuela, and other countries to wait in the notoriously dangerous Mexican border state of Tamaulipas and opened secretive tent courts in Laredo and Brownsville, Texas, for MPP hearings.

This policy delivers children, their families, and other asylum seekers to areas so plagued by violence that the U.S. State Department has designated the state of Tamaulipas a Level 4 threat risk—the same warning as Afghanistan, Iraq, Syria, Somalia, North Korea, and Yemen. Yet the administration cynically touts this dangerous and illegal policy as an "effective" alternative to family separation and family detention that brings "integrity" to the immigration system – asserting that it keeps "families together and not in custody." But the reality is that the Trump Administration has refused to implement humane, effective, and fiscally prudent strategies to manage refugee arrivals in ways that uphold U.S. law and treaty commitments.

MPP works in tandem with other illegal administration policies (including turn-backs, the third-country transit asylum ban, which went into full effect in September, and, once implemented, asylum-seeker transfer agreements with El Salvador, Guatemala, and Honduras) to ban, block, and terrify refugees from seeking protection in the United States. The forced return policy violates legal prohibitions in U.S. law and international obligations on returning people seeking U.S. protection to persecution and torture, and blatantly flouts the asylum laws and due process protections Congress adopted for refugees seeking protection at the border.

Since the start of MPP in January, DHS has forced nearly 50,000 asylum seekers and migrants to wait in danger in Mexico. In addition, some 26,000 are stranded in Mexico due to metering—the illegal policy of turning back asylum applicants at ports of entry.

This report is based on interviews with asylum seekers stranded in Mexico, attorneys, humanitarian volunteers, and Mexican government officials; continuing field research, including in Matamoros, Mexico; observation of MPP immigration court hearings; and reports from human rights organizations, legal monitors, and the media. Human Rights First observed immigration court proceedings at the Brownsville tent court remotely from the Harlingen immigration court because U.S. Customs and Border Protection (CBP) denied Human Rights First's request for access to the facility. This report is an update to our March 2019 and August 2019 reports. Human Rights First found:

- The Trump Administration is delivering men, women and children seeking refuge from Cuba, El Salvador, Honduras, Nicaragua, Venezuela, and other countries to some of the most dangerous areas of Mexico. DHS continues these dangerous forced returns despite widely reported media, academic, and NGO reports that organized criminal groups and corrupt Mexican law enforcement officials, among others, target asylum seekers for kidnapping, torture, rape, and other violent attacks. For example, after DHS returned them to Nuevo Laredo, a Guatemalan family with two young children, five Cuban asylum seekers, and four Venezuelan women and a girl were among those kidnapped and held captive in multiple separate incidents. Two other young women were kidnapped as they slept on the street after DHS returned a group of asylum seekers to Nuevo Laredo

Human Rights First

ORDERS FROM ABOVE

following a Laredo tent court hearing. Instead of briefly passing through these dangerous regions to reach the U.S. border to request refugee protection, tens of thousands of asylum seekers are now stranded in peril for months.

- There are already over 340 public reports of rape, kidnapping, torture, and other violent attacks against asylum seekers returned to Mexico under MPP** – a sharp increase from August when Human Rights First identified 110 publicly reported attacks against returned individuals. But these kidnappings and assaults are still likely vastly underreported as the overwhelming majority of returned individuals have not spoken with journalists or human rights investigators. These human rights abuses are the predictable result of the Trump Administration and DHS decision to send families and other asylum seekers to wait in dangerous areas, where they are targeted because of their race, gender, sexuality, nationality, and status as migrants.
- The MPP fear screening process is a farce that returns asylum seekers to grave danger.** CBP continues to fail to refer asylum seekers for these deeply flawed fear-screening interviews, which appear to be increasingly cursory and perfunctory. DHS has returned individuals to Mexico under MPP who were previously targeted there, including a transgender woman from El Salvador, who had been kidnapped and raped, and a Nicaraguan political activist, who was kidnapped for ransom and who witnessed his abductors torturing another man captive who had tried to escape. A woman kidnapped in Mexico with her three children was told by a CBP officer, “we have orders from above to return all;” a CBP officer told a man kidnapped with his son in Mexico that if he insisted on claiming a fear of return there, he would be separated from his son.
- In violation of its own policy, DHS returns Mexican nationals and vulnerable individuals, including those with serious medical issues, pregnant women, and LGBTQ persons.**
- Refugees and migrants are stranded in Mexico in often inhumane and horrific conditions.** More than one thousand children, families, and adults are sleeping on the streets in front of the Matamoros port of entry without adequate access to water or proper sanitation, too afraid to enter the city because of the extreme violence there. An American nurse, visiting as a volunteer, told Human Rights First researchers that many of the children were suffering from diarrhea and dehydration.
- MPP is a due process charade** that effectively makes it impossible for the vast majority to be represented by counsel in their immigration court removal proceedings. Nearly 99 percent of all returned asylum seekers were unrepresented through August, according to the latest available data from the immigration courts. Not only does MPP endanger the safety of refugees, but it also threatens the safety of American lawyers and volunteers whom DHS is essentially pushing to cross into areas of Mexico plagued by kidnappings and deadly violence to attempt to provide some assistance.

Despite widely reported attacks on returned asylum seekers under MPP, CBP Acting Commissioner Mark Morgan stated in September that he didn't believe accounts of kidnappings, dismissing them as "anecdotal allegations." Morgan cited a lack of information from the Mexican government "corroborating or verifying these allegations" but failed to acknowledge that attacks against migrants often go unreported to Mexican law enforcement, in part because some Mexican police officers and security forces have been implicated in kidnapping, rape, and other human rights abuses against migrants. In late August, Human Rights First filed a complaint with the DHS Office of Inspector General (OIG) and Office of Civil Rights and Civil Liberties with information on the rape, kidnapping, and assault of dozens of returned asylum seekers in Mexico.

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Human Rights First urges the Trump Administration to:

- Cease MPP and all other policies and practices that violate U.S. asylum and immigration law and U.S. Refugee Protocol obligations, including the third-country transit asylum ban, turn-backs and orchestrated reductions on asylum processing at ports of entry, and all attempts to send asylum seekers to countries, including El Salvador, Honduras, Guatemala and Mexico, that do not meet the legal requirements for safe-third country agreements under U.S. law. Instead, the United States should employ effective and humane strategies that uphold U.S. laws and treaties.
- Direct U.S. Customs and Border Protection (CBP) to restore timely and orderly asylum processing at ports of entry and ensure humane conditions for those held temporarily under CBP custody, meeting all legal standards, including the Flores Settlement Agreement and DHS internal detention policies.

Human Rights First recommends that Congress:

- Withhold appropriations to DHS and the Department of Justice used to carry out MPP; hold MPP oversight hearings (including the legally dubious transfer of funds for disaster preparation to fund the construction of MPP tent courts); and conduct official visits to Mexican border towns, CBP facilities and Border Patrol stations on the southern border, and immigration courts including tent facilities to monitor the massive human rights violations caused by MPP.

**Hundreds of Publicly Reported Cases of Rape, Kidnapping, and Assault**

Instead of allowing asylum seekers to remain safely in the United States while their asylum claims are decided, as required by the U.S. Refugee Act and subsequent immigration law, the Trump Administration – through MPP – delivers asylum seekers and migrants to rape, kidnapping, torture, and other violent assaults in Mexico. Some

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returned asylum seekers have been targeted outside of Mexican migration offices and in transiting to and from U.S. ports of entry to attend immigration court. During its most recent research, Human Rights First researchers identified an additional 55 unreported cases of individuals returned under MPP who were harmed in Mexico. Although likely a gross underestimate of the harm to returned asylum seekers given the limited monitoring and investigations of the program to date, review of published media accounts, human rights reports, legal monitor findings, court filings, and other publicly available information reveal that at least 343 individuals subject to MPP have been violently attacked or threatened in Mexico¹ – already more than triple the 110 incidents Human Rights First identified in our August 2019 report.

In Nuevo Laredo and Matamoros, Tamaulipas, thousands of asylum seekers face acute dangers. DHS returns more than 1,000 asylum seekers there each week despite the U.S. Department of State Travel Advisory designating the area as a Level 4 risk – the “highest advisory level due to greater likelihood of life-threatening risks” and the same threat assessment level as Afghanistan, Iraq, Syria, Somalia, North Korea, and Yemen. The travel advisory warns U.S. citizens not to travel to Tamaulipas due to “violent crime, such as murder, armed robbery, carjacking, kidnapping, extortion, and sexual assault,” as well as widespread gang activity and abductions by armed groups who demand ransom payments. According to the advisory, Mexican “federal and state security forces have limited capability to respond to violence in many parts of” Tamaulipas. But despite the State Department warnings, the Trump Administration sends asylum seekers to face these extreme dangers for months as they await immigration hearings in the United States.

Through MPP, DHS effectively delivers families, children and other individual asylum seekers to cartels, criminal groups, and corrupt Mexican law enforcement officials who routinely kidnap, torture, rape, and extort returned asylum seekers. Some kidnappings take place immediately after DHS dumps asylum seekers in Mexico, often from outside of the offices of the Instituto Nacional de Migración (Mexican Migration Institute or INM). Asylum seekers are also at high risk of abduction as they travel to and from U.S. ports of entry for immigration hearings. CBP sometimes requires individuals in MPP to appear at 4:30 in the morning for processing before immigration hearings, forcing them to travel through dangerous areas in the middle of the night – yet another reflection of the total lack of concern for the safety of asylum seekers returned to Mexico.

For example, in Nuevo Laredo, organized criminal syndicates target returned asylum seekers. Not even migrant shelters there are safe. On August 3, Pastor Aarón Méndez, director of a migrant shelter in Nuevo Laredo, was kidnapped after reportedly protecting Cuban asylum seekers from being abducted. He remains missing. A Honduran migrant told the Texas Observer that cartel members had threatened a woman who had provided her and other migrants with shelter in Nuevo Laredo and, as a result, the woman had forced all the migrants to leave. A few of the dozens of kidnappings of asylum seekers returned by DHS to Nuevo Laredo include:

- A three-year-old boy from Honduras and his parents were kidnapped after DHS returned them to Nuevo Laredo. The boy's parents were separated, and the woman reported hearing the kidnappers beat and electrocute her husband. When she last saw him lying on the ground, beaten and bleeding, he told her, “Love, they’re going to kill us.” The woman and her three-year-old son were released but she does not know if her husband is alive.
- Two young women were abducted in Nuevo Laredo from a group of asylum seekers who had just been returned there by DHS following an immigration court hearing in late September at the Laredo tent court. An asylum seeker in the group reported that they had been forced to sleep on the street because no transportation had been provided to return asylum seekers to Monterrey, where they had previously been

¹ A list of these incidents is on file with Human Rights First.

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bused by the Mexican government. During the night unknown men kidnapped the young women while the others managed to escape.

- Five Cuban asylum seekers returned by DHS to Nuevo Laredo were kidnapped there, as reported by an attorney representing clients in Nuevo Laredo. Even after they were released, the Cubans continued to receive threats from individuals they suspect are related to the cartels that control the area.
- Four Venezuelan women and a girl were abducted just outside the INM offices in Nuevo Laredo in July, according to a declaration provided to Human Rights First from a Cuban asylum seeker who reported witnessing the kidnappings. He reported that a group of men stopped a taxi that an INM employee had arranged to take the four Venezuelan women and girl to a local shelter and kidnapped them.
- The men who kidnapped a Guatemalan asylum-seeking family, including children ages 4 and 6, in Nuevo Laredo specifically targeted them because they had been expelled by DHS under MPP. The family was released after several days in captivity but told they could be kidnapped again at any time and that they would be required to pay extortion calculated based on the number of days they were in Nuevo Laredo. The kidnappers reviewed the family's MPP court documents to determine the date they had been returned by DHS and the date of their upcoming court hearing. They are living in terror waiting for their next hearing, afraid they could easily be kidnapped again while going to or returning from court.
- In late September, a Honduran asylum seeker was kidnapped while travelling from Monterrey to Nuevo Laredo to attend an MPP hearing at the Laredo tent court with his 16-year-old son. Another asylum-seeking family brought the boy to the port, where CBP processed him as an unaccompanied child given his father's disappearance. According to attorneys familiar with the case, the man remains missing.
- A child and his father were kidnapped the same day DHS returned them to Nuevo Laredo and the kidnappers threatened to take the child's kidneys. They were held with dozens of abducted women and children, and around twenty men. The kidnappers separated the women from the men and beat the men who tried to see what was happening to the women. One man who tried to escape was shot and killed. "One of the kidnappers told me that the kidneys of my [child] were good for removal," the father sobbed, recounting his ordeal to Vice News. "I can't sleep thinking about it. Every night, I dream about everything that has happened to us." After this trauma, the father said his child "has stopped talking altogether."
- After DHS expelled a six-year-old boy and his mother to Nuevo Laredo under MPP, they were abducted at the bus station and held for three weeks in a succession of different houses. "It's dangerous here. Lots of things can happen," the mother said.
- An 18-year-old young woman who DHS separated from her sister was returned to Nuevo Laredo, where she was reportedly kidnapped and raped.
- A seven-year-old girl and her mother, a Honduran asylum seeker, were kidnapped along with four other migrants just days after they were returned to Nuevo Laredo in July, according to the Los Angeles Times.

Asylum seekers returned by DHS under MPP have been kidnapped and harmed in other parts of the Mexican border region as well, including:

- A Central American family with three children were abducted by men wearing Mexican police uniforms after being returned by DHS to Ciudad Juárez in August. An attorney assisting the family reported that photos sent with ransom demands to the family's relatives in the United States showed the family in what appeared to be a government office.

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- A Guatemalan family with two children were kidnapped for ransom by men in Mexican federal police uniforms after DHS returned them to Ciudad Juárez in July. The family told an immigration attorney that the kidnappers tortured some of the migrants held with them, duct-taping plastic bags over their heads to suffocate them. They and others managed to escape when their abductors unexpectedly left. However, the family later saw the same men who had kidnapped them near the shelter where they were hiding.
- In Tijuana, a woman and her child were kidnapped after DHS returned them to Mexico under MPP. A family member in the United States contacted Margaret Cargioli, an attorney at the Immigrant Defenders Law Center, concerned that the family would be ordered removed if they were not released in time for their upcoming immigration court hearing in San Diego.
- A Honduran asylum seeker, who had previously been kidnapped in Mexico with his son, was kidnapped again after DHS returned them to Matamoros. He told his attorney, Veronica Walther, that the armed men who abducted him "burned me with lit cigarettes" because he could not meet their extortion demands.
- A 3-month-old baby and her asylum-seeking mother from Honduras were nearly kidnapped in Matamoros after being returned there by DHS. The woman told researchers from Human Rights First in September that men had attempted to force the family into a car but were prevented from abducting them by the owner of a nearby laundromat who intervened.

In addition to harm suffered during abductions, numerous asylum seekers have been assaulted or threatened in Mexico after being returned there by DHS. Some recent attacks include:

- On September 3, three armed men burst into a Ciudad Juárez shelter, where they assaulted and robbed a group of Cuban asylum seekers returned there under MPP. Several individuals were transported to a local hospital for treatment.
- An asylum seeker from Honduras sent by DHS to Matamoros in July was assaulted and threatened with rape, targeted for being a lesbian and a migrant. In an interview recorded by the Texas Civil Rights Project and shared with Human Rights First, the woman said that a few blocks from the makeshift tent camp in Matamoros attackers who discovered she was a lesbian hit her in the face, leaving her with a busted lip. In September, men at the camp told her they would "teach us [lesbians] to like men," a statement she understood to be a threat to rape her.
- In late September, a young woman and her brother seeking asylum from Cuba who had been returned by DHS to Matamoros under MPP were attacked in the street, beaten, and robbed, according to their legal representative.
- A Salvadoran asylum seeker returned by DHS to Tijuana was attacked, threatened, and abused with slurs calling Salvadorans "trash" and "leeches." The incident exacerbated the woman's already precarious mental state. A therapist evaluating the woman found her to be acutely suicidal, according to her attorney.
- A gay Cuban asylum seeker, returned by DHS to Matamoros in July after he spent months waiting on the metering list at the port of entry, said police officers had extorted him in Matamoros. In an interview conducted by the Texas Civil Rights Project and shared with Human Rights First, the man reported that police frequently attempt to enter the apartment building in Matamoros where he has found shelter and demand money from the approximately 60 to 70 migrants crammed into six or seven units there.
- A Cuban woman who was seeking asylum, but turned back to Matamoros by DHS, told Human Rights First researchers that she had been threatened and assaulted during the nearly five months she had already been waiting in Matamoros. She said that other Cuban women returned to Matamoros had been raped, but women have "only two options, you are quiet, or they kill you."

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- A teenage Guatemalan asylum seeker was attacked and beaten in the street in Mexicali, according to attorneys from a legal services organization that visited Mexicali in September. On the day prior to Human Rights First's visit to Mexicali in June, forty men **attacked** residents of a migrant hostel with metal bars and pipes, severely injuring several individuals including a Central American asylum seeker

DHS continues to expel asylum seekers under MPP who were previously targeted in Mexico despite their vulnerability to additional harms on account of their status as migrants, nationality, gender, and/or other protected characteristics. Examples include:

- An attorney who attempted to interview a Central American asylum seeker who had been raped in Ciudad Juárez, but was returned there by DHS nonetheless, said that the woman "was so traumatized she couldn't write her name on a pad of paper. **She trembled so much it was just scribbles.**" The attorney told Human Rights First that the women is pregnant as a result of the assault.
- A Venezuelan asylum seeker who was kidnapped in Reynosa and expelled by DHS to Nuevo Laredo under MPP told reporters from Voices of America, "**I thought this would be, as they say, the American dream. But for me, it's only been an American nightmare.**"
- Three children, all under the age of ten, and their mother sought asylum in the United States but were sent by DHS to Matamoros. They were returned to Mexico even though they had previously been abducted in Villahermosa. The family was held by kidnappers for nearly a month and only managed to escape when other migrants held with them helped the family to escape when the woman's youngest daughter became gravely ill. When the mother told CBP about the kidnapping and her fears her family would be harmed if returned to Mexico, the officer told her that "we have orders from above to return all."
- DHS sent Eduardo Áquila, a 33-year-old Nicaraguan asylum seeker, back to Mexico under MPP even though he had been repeatedly stabbed and kidnapped there, according to a report in the Texas Observer. During the kidnapping, his abductors tied his hands with a cable, beat and burned him. After he escaped to Tijuana, men slashed his arm with a knife. When Mr. Áquila requested asylum, CBP officers sent him to the hospital for treatment but then returned him to Tijuana with paperwork noting that "he sustained laceration to right elbow during entry."
- DHS returned Edwin, a Cuban asylum seeker, to Mexico even though he had been extorted by corrupt police officers and robbed at gunpoint in Reynosa. Afraid to remain there on the metering list at the port of entry, Edwin had crossed the river to seek asylum. CBP officers returned him to Nuevo Laredo without explaining that he could request a fear interview. Edwin traveled to Monterrey in search of safer accommodation but remained in danger there and was pursued by two men in the street late one night as he left a job washing dishes.
- Mario Rodríguez, a 27-year-old asylum seeker from Nicaragua, was returned to Matamoros by DHS even though CBP agents were personally aware that he had been brutally attacked there while forced to wait on an illegal metering list. In late July, a man who identified Mr. Rodríguez as a migrant hit him in the head with a wrench. With blood pouring down his face, Mr. Rodríguez unsuccessfully begged CBP officials on the international bridge that links Matamoros and Brownsville to allow him to seek asylum. Weeks later, when he was finally allowed to approach the Brownsville port of entry, CBP returned him to Matamoros under MPP, despite his efforts to tell CBP officers about his fear of remaining in Mexico. Mr. Rodríguez told the Texas Observer that he was considering returning to Nicaragua because he'd heard that with the cost of repatriating a body, it would be cheaper for his family if he died in Nicaragua rather than in Mexico.

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- A 12-year-old girl and her father, asylum seekers from Honduras, were kidnapped in southern Mexico, an experience that further traumatized the girl who had already been traumatized by a brutal attack on her family in Honduras. When her father told CBP about the kidnapping, a CBP officer said that he did not believe the man because he had not filed a police report.

It is often fruitless, however, and at times dangerous, to report crimes to the Mexican police, who have themselves been implicated in human rights abuses against migrants and who consistently fail to investigate or prosecute reported crimes. Human Rights Watch has reported that Mexican officials have, for instance, "acknowledged that corruption among Ciudad Juárez police officers [is] commonplace."

DHS returns asylum seekers and migrants to Mexico in violation of internal MPP policy. DHS claims that "individuals from vulnerable populations may be excluded on a case-by-case basis;" yet, the agency returns vulnerable individuals including those with "known physical/mental health issues" and LGBTQ persons, as well as Mexican nationals, who are not eligible for MPP. Those returned in violation of the policy include:

- Approximately a dozen LGBTQ asylum seekers from Cuba, El Salvador and Honduras returned by DHS to Matamoros and at least one gay Honduran asylum seeker was sent to Nuevo Laredo, despite persecution of LGBTQ people in Mexico. At least one report had indicated that CBP does not return LGBTQ asylum seekers to Mexico under MPP, yet these vulnerable asylum seekers were returned to highly dangerous areas;
- A Honduran asylum seeker who suffers from severe seizures after he was kidnapped and beaten in Ciudad Juárez;
- A boy with Down syndrome and a deaf, mute woman returned by DHS to Matamoros;
- A child who suffers brain seizures and needs medical care his father said he could not secure in Mexico;
- Multiple pregnant women, including a woman experiencing contractions and another woman who ultimately gave birth in a tent in Matamoros, according to a complaint filed with the DHS OIG by the ACLU of Texas and the ACLU Border Rights Center; and
- Over 50 Mexican nationals, according to immigration court data analyzed by Syracuse University Transactional Records Access Clearinghouse (TRAC) – a clear violation of the policy, which explicitly exempts "citizens or nationals of Mexico" from MPP.

Screening Sham

DHS's MPP screening process is a sham that lacks the basic safeguards Congress created to prevent the deportation of asylum seekers to persecution through the credible fear screening process and other safeguards to assure access to asylum hearings. But the design and implementation of the MPP screenings makes clear that they are not intended to protect asylum seekers and migrants at risk in Mexico but to expedite their return there despite these risks. The amicus brief submitted in the suit challenging MPP by the union for the asylum officers from the U.S. Citizenship and Immigration Services (USCIS), who conduct these screenings, stated that "MPP fails to provide even the basic procedural protections available to asylum applicants subject to [expedited removal]." Indeed, the MPP screening process is rigged against asylum seekers at every stage:

CBP officers continue to routinely fail to even refer asylum seekers and migrants for fear screenings, even if they affirmatively express a fear of return to Mexico. Individuals returned without screening include:

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- A Honduran asylum seeker and his 9-year-old son were expelled to Matamoros without a fear screening even though the man explained to CBP officers that he and his son had been kidnapped and that he was subsequently tortured by Mexican law enforcement officers in Tamaulipas who burned him with lit cigarettes. The man showed Human Rights First researchers several small circular scars on his stomach that appeared consistent with his account. **He said a CBP officer threatened to separate him from his son if he persisted in insisting that he feared return to Mexico.**
- CBP officers returned a Nicaraguan political activist seeking asylum in the United States to Mexico even though corrupt Mexican police officers in Reynosa had handed him over to kidnappers in mid-August. He was held along with a group of about 24 other migrants – including about ten non-Spanish speaking black migrants, several other Central American migrants, and a Russian man who had been tortured by the abductors after apparently attempting to escape.
- CBP returned Yerson, a Cuban asylum seeker, to Mexico where he had been repeatedly robbed in Reynosa in the days before he crossed the border to seek asylum. Yerson was returned to Mexico without a fear screening: "I told [the CBP officer processing him for MPP] that I had been robbed three time in Reynosa, but he didn't pay attention to me. . . . He only told me that I was going to be brought to the bridge in Nuevo Laredo."
- Border Patrol agents failed to refer for screening L.E.L.P., a pregnant 18-year-old Ecuadorian asylum seeker who had been kidnapped in Nuevo Laredo after she was returned there under MPP. Despite advocates' repeated attempts to request that she be removed from MPP, L.E.L.P. was again returned to Nuevo Laredo in late September, according to the OIG complaint filed by the ACLU of Texas and the ACLU Border Rights Center.

Fear screening interviews conducted by asylum officers have become increasingly farcical. DHS continues to deny asylum seekers basic due process protections. In an *amicus brief* submitted in the suit challenging MPP, the U.N. Refugee Agency made clear that fear screening procedures, like those employed by DHS in MPP, "lack key safeguards required by international law" as "applicants do not have access to counsel in the screening procedure; a decision is not appealable by the applicant; and applicants cannot meaningfully prepare their refugee status determination claims by meeting with lawyers and/or receive notice of upcoming court dates, or otherwise be assured of due process in their full asylum hearings." An asylum officer speaking to Vox reportedly stated that the standard for fear of Mexico screenings is "all but impossible to meet."

- DHS refuses to allow access to attorneys during MPP screening interviews even where it has the physical capacity to do so. For instance, an attorney who represents asylum seekers at the Laredo tent court facility told Human Rights First in September that CBP has not permitted him to be present with clients during MPP fear-screening interviews even though they take place at the same facility and in the same interview rooms used for attorney visits. From the start of MPP, DHS has claimed that it cannot provide access to counsel during fear screenings because of "limited capacity and resources at ports-of-entry and Border Patrol stations." However, this inadequate claim does not explain why attorneys are excluded from monitoring interviews telephonically, as was initially permitted in a small handful of cases, and does not account for why the agency chose to conduct MPP fear-screening interviews in CBP facilities where attorneys are routinely barred. In contrast, credible fear interviews are regularly conducted at immigration detention facilities where attorneys can be present or can participate by telephone.
- Jodi Goodwin, one of the few attorneys representing asylum seekers returned to Matamoros, reported that MPP fear screening interviews, which ordinarily require several hours, are now being conducted in ten minutes or less and consist only of yes-or-no questions. An attorney representing

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asylum seekers returned to Nuevo Laredo told Human Rights First researchers that MPP fear screening interviews last less than half an hour there. The attorneys said that their clients have been processed by CBP and returned to Mexico within two hours of being referred by immigration judges for MPP fear-screening interviews.

- A lesbian asylum seeker from Cuba who requested an MPP fear interview at the Brownsville port of entry in September reported to a Human Rights First researcher that a CBP officer entered the room during her telephonic fear screening, spoke to the asylum officer conducting the interview, and appeared to instruct the asylum officer to alter the line of questioning. The woman did not pass the fear screening and was returned to Mexico.
- **The percentage of individuals who pass DHS's farcical fear of Mexico screenings remains microscopic.** Data from [TRAC](#) shows that as of August only one percent of individuals in MPP (460 out of 38,291) were removed from the program (which includes those who did not pass a fear screening but were removed at the discretion of CBP for other reasons).

The vast majority of individuals have been returned after MPP screening interviews even when they have been previously targeted in attacks in Mexico:

- In Matamoros, six LGBTQ individuals – including a transgender Salvadoran woman who had been kidnapped in Mexico at gunpoint and raped – were again expelled to Matamoros under MPP after requesting and failing to pass MPP fear screening interviews at the Brownsville port of entry in early September. A young gay Honduran asylum seeker was returned to Nuevo Laredo after the interviewing DHS officer decided that he did not meet the high screening standard despite the documented harms suffered by gay men in Mexico.
- An asylum-seeking couple from Cuba who had been kidnapped in Mexicali was returned there by DHS after failing an MPP fear-screening interview. The pair, who later spotted one of the men who abducted them in Mexicali, were "so traumatized after being kidnapped they spoke in a whisper" during a consultation in September with lawyers from the Immigrant Defenders Law Center visiting Mexicali.
- Eduardo Áquila, the Nicaraguan asylum seeker who was repeatedly stabbed and kidnapped in Mexico, was again returned to Tijuana by DHS after he did not pass an MPP fear screening. Although he had police reports of the attacks against him, he was not allowed to present this evidence during the interview.
- DHS returned a Guatemalan asylum seeker to Ciudad Juárez in late September after an MPP fear screening even though the men who had kidnapped her continued to stalk and threaten her. According to Christina Brown, an attorney who spoke with the woman, the kidnappers sent her threatening messages and one tracked her to and entered the migrant shelter where she was sleeping at the time. The woman fears she could be kidnapped again when she goes to the port for her next immigration court hearing, as the kidnappers took her MPP documents that contain the hearing date and time. Despite this evident danger, USCIS found the woman had not established a sufficient likelihood of harm if returned to Mexico.
- An asylum-seeking woman who was kidnapped in Mexico with her son, repeatedly raped, and pursued by the kidnapper to Tijuana, did not pass an MPP fear screening. Even though the woman had a video sent to her by the kidnapper proving that he was in the same city as her and had reported the kidnapping, rape and threats to local police, she and her son were returned to Tijuana, according to the attorneys representing the family.

Stranded in Desperate Straits

Under the Trump Administration's MPP policy, DHS dumps asylum seekers in Mexico to wait for months even though they do not have access to adequate shelter, food, healthcare, or other humanitarian needs. A CBP officer falsely told a Nicaraguan family returned to Matamoros that they were being sent to a shelter with food and clothing, and another officer told a Honduran father that he and his young son would be "protected" in Mexico. Acting CBP Commissioner Morgan has stated that the U.S. government does not track what happens to individuals the agency returns to Mexico under MPP. The lack of safe shelter, particularly in Nuevo Laredo and Matamoros where DHS began returns in July, leaves thousands of asylum seekers homeless and exacerbates the already high risk of kidnapping, extortion, assault, and exploitation in border areas in Mexico.

- In Matamoros, in late September, Human Rights First researchers observed an estimated 1,200 to 1,500 asylum seekers, including hundreds of children and several breast-feeding infants, sleeping in some 300 tents in a plaza abutting the port of entry and in an adjoining park, as well as without any cover on the pavement and sidewalks. An nurse visiting the camp told Human Rights First that about 1,500 people were sleeping in the plaza, a number that aligned with Human Rights First's count of tents and other observations; a Mexican migration officer told Human Rights First that about 400 migrants were staying in the camp. Some asylum seekers have been at the makeshift camp for nearly six months, as they initially waited under the Trump Administration's metering policy, only to be turned back to Mexico under MPP.
- Asylum seekers sleeping in the Matamoros port of entry plaza reported they are afraid to venture further into the city. Two asylum seekers from Cuba waiting to seek asylum said they were robbed at knifepoint blocks from the plaza. Other returned individuals stated that they travel in groups for safety to buy food and water at nearby convenience stores and take turns staying up at night to guard children and families sleeping in the plaza because unknown men have been seen peeking into their tents at night. Single mothers were fearful their children might be kidnapped and trafficked, and a couple from Nicaragua, as well as others, reported rumors that children might be abducted for organ trafficking.
- On September 24, a group of over 16 Mexican marines appeared at the encampment in the evening in flak jackets and helmets, and carrying rifles. One of the marines told Human Rights First researchers that the unit was conducting a community patrol of the encampment and described the area as "dangerous" and "controlled by cartels."
- Sanitation is extremely limited at the Matamoros encampment. Volunteers visiting the camp raised concerns about the lack of sufficient toilets. At the time of Human Rights First's visit, two months after returns there began, the park next to the camp was strewn with human feces, and additional portable toilets had just been installed. Many complained about the lack of running water for bathing and washing clothing, explaining that they were forced to wash in the swift waters of the Rio Grande River. In September, a teenage migrant girl bathing in the river nearly drowned. On September 23, Human Rights First researchers observed Mexican authorities recover a decomposing body from the area of the river where children were bathing. A volunteer nurse reported that many children were suffering diarrhea and skin infections.
- Many at the camp reported that there was insufficient drinking water. Returned individuals said that free water supplies were very limited and inadequate given the extreme heat, which was in excess of 90 degrees. A nurse visiting the camp noted that many of the children and adults were dehydrated.

Stranded in dangerous regions of the border and facing squalid living conditions, asylum seekers must choose between remaining in the area in hopes of obtaining an attorney and pursuing their asylum claims or being bused

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to distant parts of Mexico where they will be far from the already exceedingly limited legal services along the border and unable to return for their hearings.

- In Matamoros, an INM official said that, as of late September, DHS had sent approximately 10,000 asylum seekers and migrants to the city under MPP. He claimed that on the day prior to Human Rights First's visit over 120 returned individuals in three busloads had journeyed to Tapachula in southern Mexico intending to return to their countries of origin. The INM officer estimated that half of those sent to Matamoros under MPP had returned to their home countries. From what asylum seekers told Human Rights First, some were leaving given the dangers in Matamoros, the lack of safe shelter in the city, and poor conditions in the plaza's tent encampment. While the decision to be bused to the southern Mexican border was purportedly voluntary, MPP presents asylum seekers with the impossible choice of risking their lives – and those of their children – by trying to survive for months in a dangerous area in unsanitary conditions or risking their lives by returning to danger in their home countries. A Honduran woman sent to Matamoros by DHS during Human Rights First's research there in late September reported that her first immigration court hearing was scheduled for January 2020. She said that she and three young children, including a 1-year-old baby, had nowhere to sleep for the night and that she did not know how they would even survive for the next four months until the first of likely several hearings.
- Desperation also leads some asylum seekers and migrants to attempt dangerous border crossings between ports of entry. In September, a Honduran mother and her two-year-old toddler, who had been returned by DHS to Matamoros under MPP, drowned while attempting to swim across the Rio Grande.

The Trump Administration has repeatedly asserted that Mexico will ensure humanitarian assistance for returned asylum seekers. But that claim does not relieve the United States of its responsibility to protect refugees seeking asylum at and within its borders. The administration's attempt to evade and shift responsibility is particularly disingenuous given the documented history of kidnappings, killings, and disappearances along the border, the targeting of refugees and migrants in Mexico, and corruption among Mexican authorities – including migration officials. The Mexican government should and must do more, but the United States must uphold its asylum laws and treaty commitments, and stop refouling asylum seekers and migrants to places where they face persecution, torture, and other human rights abuses.

MPP and Tent Courts are a Due Process Farce

The Trump Administration now effectively blocks refugee protection for the vast majority of asylum seekers at the southern border with its MPP policy, port of entry asylum turn backs, the third-country transit asylum ban, and the potential implementation of asylum seeker transfer agreements with El Salvador, Guatemala, and Honduras.

MPP is a due process charade—restricting access to counsel, legal information, and the ability to attend and participate in immigration hearings. In yet another attack on U.S. due process, DHS began to use secretive tent courts in Laredo and Brownsville, Texas, for MPP hearings in September and also plans to build a tent court in Eagle Pass, Texas. In July, the administration had notified Congress that it would move \$155 million from the Federal Emergency Management Agency disaster relief fund to fund construction of the tent courts. These facilities are closed to media, public observers, as well as legal service providers offering legal information sessions and screenings for potential legal representation. Referring to the MPP tent courts, immigration judge Ashley Tabaddor, president of the National Association of Immigration Judges, said: "We don't do stuff behind closed doors. That is not what America is about. . . . we are moving closer and closer to a model that doesn't resemble anything in the American judicial system."

ORDERS FROM ABOVE

Refugees subject to the third-country transit asylum ban (those who applied for asylum at a port of entry or otherwise entered the United States along the southern border on or after July 16) are permitted to apply only for withholding of removal and Convention Against Torture protection. Effectively cut off from attorneys in the United States by MPP, few will meet the excessively high requirements to receive these highly deficient forms of protection. As a result, asylum seekers in MPP, even those with well-founded fears of persecution, are likely to be denied asylum and other forms of protection and be deported to countries where they fear persecution.

MPP seriously interferes with the right, guaranteed under Section 292 of the Immigration and Nationality Act, to be represented by a lawyer.

- Nearly 99 percent of MPP returnees did not have lawyers, as of the end of August, according to immigration court data analyzed by TRAC. Only 476 out of 37,831 individuals in MPP court proceedings have legal counsel registered with the immigration court.
- Cuban, Honduran, and other asylum seekers appearing in the Brownsville tent court were overwhelmingly unrepresented at immigration court in late September. At one hearing docket observed by a Human Rights First court monitor, only one of the 23 immigrants appearing at the master calendar hearing had legal representation. At another docket, only one Cuban woman and one Honduran family of three had legal representation. The rest of the 20 individuals who appeared at the court did not have lawyers.
- At the Laredo tent court, very few of the asylum seekers and migrants appearing for court were represented, according to legal observers. A monitor from Refugees International reported that only four of 26 individuals in court on September 16 were represented by counsel. On September 18, Amnesty International monitors observed only 6 individuals with attorneys out of the 46 who appeared in court for MPP hearings.

These abysmal representation rates are the predictable consequence of a policy that effectively prevents asylum seekers from searching for attorneys in the United States as well as the acute safety concerns that prevent many U.S.-based legal services organizations and individual immigration attorneys from representing asylum seekers returned to Mexico.

- U.S.-based attorneys attempting to represent asylum seekers placed in MPP and returned to Mexico face severe dangers to travel to regions where DHS has returned asylum seekers, including Nuevo Laredo and Matamoros in Tamaulipas. The U.S. State Department recommends that U.S. citizens do not travel to Tamaulipas, which is designated as a level 4 security risk – the same applied to Afghanistan, Iraq, Syria, Somalia, North Korea, and Yemen.
- Amnesty International observers reported that asylum seekers in Brownsville MPP hearings in September were so desperate to escape the deadly dangers in Mexico that they all asked to schedule their asylum hearings rather than request more time to find an attorney.
- The Trump Administration failed to secure any guarantees from Mexico about whether U.S.-licensed lawyers would require work visas to visit clients in person or might face sanctions for the unlicensed practice of law in Mexico. Indeed, U.S.-based attorneys have reported that Mexican government officials have threatened to arrest American lawyers for practicing law in Mexico without a license.
- Human Rights First researchers spoke with over 100 asylum seekers and migrants in Matamoros; none had a lawyer. A human rights advocate from Nicaragua, who has been waiting already for three months in the dangerous and squalid conditions in Matamoros, told Human Rights First researchers that he was going to present his case on his own.

ORDERS FROM ABOVE

- In addition, Mexican immigration officials are busing some returned individuals into the interior of Mexico, effectively cutting them off from any opportunity to meet with U.S.-based lawyers operating in the border region. INM officials in Matamoros told Human Rights First researchers in late September that the agency was regularly organizing buses transporting dozens of migrants daily to Tapachula, over 1,100 miles away on the southern Mexico-Guatemala border.

Restrictions by DHS and the immigration courts on access to counsel and the use of tent court hearings undermine asylum seekers' right to legal representation and to understand and participate in their own removal proceedings.

- DHS restrictions at the Laredo and Brownsville tent courts severely limit access to counsel for asylum seekers attending immigration hearings in the United States. Acting DHS Secretary McAleenan claimed that the agency "built space for aliens to meet with their attorneys to protect [the] right [to counsel]" at the tent court facilities, but the very few attorneys representing clients in MPP hearings at these facilities said that CBP allows at most one hour for client meetings in advance of hearings, even when attorneys are representing multiple individuals scheduled for hearings on the same day and frequently denies requests to meet with clients after hearings, citing capacity constraints. This time is insufficient to consult with clients and prepare their asylum applications. For asylum seekers forced to wait in Mexico, these immigration court hearings are sometimes the only opportunity to meet in person with their attorneys, as many lawyers are unable to travel to Mexico because of security and other concerns.
- Immigration courts in San Diego and El Paso are also restricting access to lawyers and legal information. Human Rights Watch found that the El Paso immigration court prevents lawyers from meeting with clients prior to MPP hearings. The El Paso and San Diego courts continue to prohibit legal services providers and volunteer attorneys from offering legal information or meeting with unrepresented individuals to assess their cases for representation, according to attorneys representing clients in MPP hearings.
- The use of video teleconferencing (VTC) for immigration hearings threaten the due process rights of asylum seekers. All hearings conducted in the tent courts in Laredo and Brownsville are conducted remotely with immigration judges in regular courthouse facilities. Already human rights monitors and journalists watching these hearings via VTC have reported flaws in translations and interruptions in video feeds. A 2017 report commissioned by the immigration courts found that VTC may be so disruptive that "due process issues may arise." Judges reported that it is difficult to interpret body language and nonverbal communication, which some judges consider in making credibility determinations.
- U.S. asylum law is highly complex; yet, MPP leaves asylum seekers who do not speak English and are not trained lawyers to answer complicated questions without legal representation. One Cuban asylum seeker, at a hearing attended by Human Rights First in late September, kept trying to explain to the immigration judge that he had come legally to apply for asylum at the official border post on the bridge to the United States. Non-asylum seekers also struggle in MPP without legal representation. In hearings observed by Human Rights First, one woman, whose boyfriend was in the United States and planned to marry her, was essentially left asking the immigration judge and DHS attorney whether she should pursue or abandon her immigration court hearing. A Cuban woman who had a U.S. citizen parent was unrepresented, while the judge and trial attorney tried to navigate the challenge of handling the proceeding without legally advising her of a potential claim to U.S. citizenship.

Stranding asylum seekers in Mexico creates fundamental barriers to attend court hearings and cuts them off from attorneys in the United States who could help prepare asylum applications, collect evidence, and represent them in court. As a result, very few returned asylum seekers are likely to win their cases, despite

ORDERS FROM ABOVE

many having valid claims. Some may be ordered removed *in absentia* because CBP provides inaccurate notices for hearings that are often scheduled many months away.

- Asylum seekers miss hearings because they have been kidnapped or are otherwise unable to make dangerous journey to the port of entry. As noted above, a Honduran man was kidnapped while traveling between Monterrey and Nuevo Laredo to attend court at the Laredo tent court facility in September. In Ciudad Juárez, Uber and taxi drivers reportedly refuse to pick up migrants at shelters because of the danger that kidnappers and extortionists will target their passengers.
- In MPP hearings observed by Human Rights First and other court monitors, asylum seekers struggled to understand how to fulfill the requirements of completing asylum applications in English, submitting English translations of all evidence in support of their asylum cases, and providing certifications of translation. An immigration judge hearing cases for the Laredo MPP tent court told one family: "These [asylum] applications are in English, and neither of you read or write English. And you're in a country where most people speak Spanish. So all I can tell you is to do your best." Another judge hearing cases for the Brownsville tent court encouraged asylum seekers to reach out to family or friends for help. Given the lack of access to legal representation, many will have no choice but to have asylum applications and documents translated by individuals who will understandably make many mistakes – mistakes which government attorneys may subsequently cite as evidence of "inconsistencies" or a lack of credibility.
- DHS continues to issue immigration documents to asylum seekers in MPP that fail to list an address where they can receive crucial hearing notices and other important documents. For asylum seekers in MPP, many of whom are sleeping in shelters, living on the streets, or moving from place to place due to threats and attacks, DHS has been listing the addresses of shelters, even shelters where they have never been, as well as using "Facebook" as an address and claiming to contact asylum seekers through social media. Other documents list no address at all. At one hearing observed by Human Rights First, the one individual with an attorney was the only to challenge the fake address CBP had placed on the notice to appear. Immigration judges may order asylum seekers who miss hearings removed *in absentia*.

DHS' denial of public and press access to MPP tent courts interferes with court monitoring efforts to ensure that immigration hearings are conducted fairly and consistently.

- Immigration court regulations provide that "[a]ll hearings . . . shall be open to the public" except in limited circumstances as determined by the presiding immigration judge. Yet CBP is denying public and press access to hearings at the tent courts in Laredo and Brownsville. While hearings at these facilities may be observed from the courtroom of the judge presiding via VTC, the schedule of hearings and judges assigned to them has not been made public, making it extremely difficult for court monitors and journalists to determine from where to watch MPP proceedings. For instance, in an email dated September 24, a CBP official denied Human Rights First's request to view hearings in-person at the Brownsville tent court but indicated that researchers could "observe hearings in-person, by visiting the San Antonio, Harlingen, and Port Isabel . . . immigration courts."
- Observing hearings remotely is not equivalent to monitoring in the physical courtroom with the asylum seekers and migrants. Given the size and angle of the television screens linked to the remote hearing location, as well as the distance to the observation area, it can be difficult for observers to see how many people are attending the hearing and to gather other crucial information.

ORDERS FROM ABOVE

ON HUMAN RIGHTS, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability, and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in Houston, Los Angeles, New York, and Washington D.C.

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Table 1. FY2018 Criminal Charges and Convictions for ERO Administrative Arrests

Criminal Charge Category	Criminal Charges	Criminal Convictions	Total Offenses
Traffic Offenses - DUI	26,100	54,630	80,730
Dangerous Drugs	21,476	55,109	76,585
Traffic Offenses	30,594	45,610	76,204
Immigration	11,917	51,249	63,166
Assault	20,766	29,987	50,753
Obstructing Judiciary, Congress, Legislature, Etc.	11,189	11,863	23,052
Larceny	5,295	15,045	20,340
General Crimes	8,415	10,973	19,388
Obstructing the Police	5,754	10,155	15,909
Fraudulent Activities	4,201	8,661	12,862
Burglary	2,829	9,834	12,663
Weapon Offenses	3,672	8,094	11,766
Public Peace	4,029	7,236	11,265
Invasion of Privacy	2,255	5,090	7,345
Sex Offenses (Not Involving Assault or Commercialized Sex)	1,913	4,975	6,888
Stolen Vehicle	1,693	4,568	6,261
Family Offenses	2,465	3,526	5,991
Robbery	1,139	4,423	5,562
Sexual Assault	1,610	3,740	5,350
Forgery	1,632	3,526	5,158
Damage Property	1,872	2,597	4,469
Stolen Property	1,335	3,127	4,462
Liquor	1,995	2,290	4,285
Flight / Escape	1,090	2,264	3,354
Kidnapping	791	1,294	2,085
Homicide	387	1,641	2,028
Health / Safety	522	1,242	1,764
Commercialized Sexual Offenses	729	1,010	1,739
Threat	583	791	1,374

Notes: Immigration crimes include "illegal entry," "illegal reentry," "false claim to U.S. citizenship," and "alien smuggling." "Obstructing Judiciary& Congress& Legislature& Etc." refers to several related offenses including, but not limited to: Perjury; Contempt; Obstructing Justice; Misconduct; Parole and Probation Violations; and Failure to Appear. "General Crimes" include the following National Crime Information Center (NCIC) charges: Conspiracy, Crimes Against Person, Licensing Violation, Money Laundering, Morals - Decency Crimes, Property Crimes, Public Order Crimes, Racketeer Influenced and Corrupt Organizations Act (RICO), and Structuring.

U.S. Department of Homeland Security

Notice to Appear

WASH09
8:50 PM*In removal proceedings under section 240 of the Immigration and Nationality Act:*

Subject ID: [REDACTED]

File No: [REDACTED]

DOB: [REDACTED] /2011

Event No: [REDACTED]

In the Matter of:

Respondent: [REDACTED]

currently residing at

(Number, street, city and ZIP code)

(Area code and phone number)

1. You are an arriving alien.
 2. You are an alien present in the United States who has not been admitted or paroled.
 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of EL SALVADOR and a citizen of EL SALVADOR ;
3. You arrived in the United States at or near SANTA TERESA, NM , on or about June 15, 2019 ;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

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On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:
212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
 Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30(i)(2) 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
AT A PLACE TO BE SET

(Complete address of Immigration Court, including Room Number, if any)	
on <u>a date to be set</u>	at <u>a time to be set</u>
(Date)	(Time)
to show why you should not be removed from the United States based on the	
charge(s) set forth above.	
Date <u>June 16, 2019</u>	<u>CLINT, TEXAS</u>
ACTING PATROL AGENT IN CHARGE	
(Signature and Title of Issuing Officer)	
(City and State)	

See reverse for important information

Form I-862 (Rev. 08/01/07) N

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses or locations for surrender can be obtained from your local DHS office or over the internet at <http://www.ice.dhs.gov/about/dro/contact.htm>. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before _____

(Signature of Respondent)

Date: _____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on June 16, 2019, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

- in person by certified mail, returned receipt requested by regular mail
 Attached is a credible fear worksheet.
 Attached is a list of organizations and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language at the [REDACTED] place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act. [REDACTED] Border Patrol Agent

(Signature of Respondent if Personally Served)

(Signature and Title of Officer)



**CWS Statement to the U.S. Senate Committee on Homeland Security and Governmental Affairs,
pertaining to its hearing, "Unprecedented Migration at the U.S. Southern Border: The Year in
Review," on Wednesday, November 13, 2019**

As a 73-year old humanitarian organization representing 37 Protestant, Anglican, and Orthodox communions and 24 refugee resettlement offices across 17 states, Church World Service (CWS) urges Congress to affirm the legal right of all people to seek protection where they feel safe and to condemn the administration's latest anti-asylum policies that are immoral, illegal, and cruel.

CWS urges Congress to defund the administration's deadly Migrant Protection Protocol (MPP) policy. In September 2019, the Trump administration's policy of returning asylum seekers to Mexico was expanded, sending men, women and children from Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Venezuela, and other countries to wait in the notoriously dangerous state of Tamaulipas and opened secretive tent courts in Laredo and Brownsville, Texas, for MPP hearings. This policy delivers children, their families, and other asylum seekers to areas so [plagued by violence](#) that the State Department has designated the state of Tamaulipas a Level 4 threat risk—the same warning as Afghanistan, Iraq, Syria, Somalia, North Korea, and Yemen. Since January 2019, DHS has forced nearly 50,000 asylum seekers and migrants to wait in danger in Mexico. Some 26,000 are stranded in Mexico due to metering—the illegal policy of turning back asylum applicants at ports of entry. The forced return policy violates legal prohibitions in U.S. law and international obligations on returning people seeking U.S. protection to persecution and torture.

CWS condemns the administration's dangerous asylum ban and urges Congress to protect individuals' legal right to seek asylum in the United States. The administration announced an interim final rule that bans those who seek safety at the U.S. border from asylum protections if they travel through another country en route to the United States, known as the [Third Country Transit Bar](#) that went into effect September 2019. This asylum ban is immoral, illegal, and cruel – and is diametrically opposed to our nation's values of compassion and welcome. This policy requires asylum seekers to stay in the very same unsafe countries that many migrants are fleeing, banning virtually all asylum seekers entering the United States by the southern border, including those in MPP from receiving asylum. This bar applies to all non-Mexican asylum seekers, even those who are fleeing the most horrid circumstances and those in protected categories.

CWS is strongly opposed to immigrant and family detention and any proposal that would undermine Flores protections. Despite [claims](#), detention in DHS custody is plagued with systemic [abuse](#) and inadequate access to medical care. Numerous reports have revealed the systemic human rights abuses, [sexual assaults](#), and dehumanizing conditions that exist in the detention facilities overseen by the current administration. These exceedingly overcrowded detention centers are [unsanitary, unhealthy, unsafe](#) and are leading to extreme, and [sometimes fatal](#), mental and physical health outcomes for children. The American Association of Pediatrics has found that family detention facilities [do not meet basic standards](#) for children and "[no child should be in detention centers or separated from parents](#)." CWS demands that Congress reject any proposal that would expand family detention or violate the *Flores* agreement's long-standing consensus that children should not be detained for longer than 20 days.

CWS is equally troubled by any proposal that would weaken or eliminate provisions in the Trafficking Victims Protection Reauthorization Act (TVPRA), which provides important procedural protections for unaccompanied children in order to accurately determine if they are eligible for relief as victims of trafficking or persecution. Weakening existing legal protections, especially for children, undermines the United States' moral authority as a leader in combating human trafficking and increases vulnerabilities for trafficking victims by curtailing access to due process, legal representation, and child-appropriate services. CWS urges the administration and Congress to affirm the right of all people to seek protection and ensure that individuals seeking safety are not returned to their traffickers and exploitation.

As a faith-based organization, we urge Congress to hold the administration accountable to respecting the humanity and dignity of all immigrant families, asylum seekers, unaccompanied children seeking protection.

Post-Hearing Questions for the Record
Submitted to Mark Morgan
From Senator Kamala Harris

"Unprecedented Migration at the U.S. Southern Border: The Year in Review"

November 13, 2019

Question#:	1
Topic:	Safety in Mexico
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On January 25, 2019, the administration implemented the Migrant Protection Protocols (MPP), referred to as the "Remain in Mexico" policy. Under the MPP, the administration returns certain immigrants that claim protection at the border to various cities in Mexico to wait for their immigration proceedings. If the individual expresses a fear of persecution in Mexico, CBP refers them to USCIS for an interview to determine whether they should be enrolled in MPP and returned to Mexico.

The U.S. Immigration Policy Center surveyed 607 asylum seekers who have been returned to Mexico under the MPP, culminating in a report published last month. According to the report, nearly 9 out of 10 respondents who were asked whether they feared return to Mexico by U.S. immigration officials indicated that they feared being returned to Mexico. Notably, the survey found that asylum seekers who attempted to enter the U.S. through California's southern border were 14.7% less likely to be asked by U.S. immigration officials about fear of being returned to Mexico when compared to asylum seekers entering in Arizona.

Despite the volume of individuals who expressed fear of return to Mexico, approximately 6 out of 10 such individuals were enrolled in MPP without any further investigation. The survey's findings suggest that asylum seekers are being sent to Mexico despite legitimate fears for their safety and the safety of their children.

Several Mexican cities are subject to State Department travel advisories due to the likelihood of life-threatening risks. What, if any, assessment has DHS conducted to assess the safety risks faced by individuals returned to Mexico under MPP?

Has CBP directed its agents to provide any safety information to individuals who are being sent to Mexico? Please provide any materials or information that is currently being distributed to individuals returned to Mexico.

Question#:	1
Topic:	Safety in Mexico
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

What steps has the Mexican government taken to ensure the safety of individuals waiting in Mexico who are enrolled in MPP?

Response: In each instance when U.S. Customs and Border Protection (CBP) begins returning migrants subject to Migrant Protection Protocols (MPP) at a new Port of Entry (POE), the expansion is coordinated with the Government of Mexico (GOM), both at the local and federal level. The U.S. Department of Homeland Security (DHS) does not have the authority to operate in Mexico, and thus defers to GOM on matters tied to safety and security in Mexican territory.

When a migrant is placed into MPP, they are provided a notice to appear (NTA) with the scheduled court hearing time and location, a tear sheet explaining when to arrive at the port of entry for the scheduled court hearing, and a list of low-cost legal service providers.

In the U.S.-Mexico Joint Declaration issued on June 7, 2019, GOM committed to authorize the entrance for humanitarian reasons of third-country nationals placed into MPP and to provide them with access to education, employment and healthcare.

Question#:	2
Topic:	Coordinating Transportation
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Individuals enrolled in MPP must report to specified ports of entry at designated times, at which point they are transported to their hearings in the United States. Is the Mexican government coordinating transportation to the ports of entry for individuals enrolled in MPP to ensure their safety? If not, what measures have been taken to ensure these individuals' safety on their trips to the border to report for their hearings?

Response: DHS defers to GOM to address questions related to the operations and services it provides to individuals in MPP in Mexico. DHS believes that the Mexican federal, state, and local governments are in the best position to provide security and/or transportation in Mexico for migrants subject to MPP who need to report to the POE to attend their court proceedings.

Question#:	3
Topic:	Shelter Beds
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS has stated that individuals returned to Mexico should seek out shelters run by the government or NGOs. DHS has also stated that "[t]he Government of Mexico has provided shelter and support for those in MPP."

How many total shelter beds are available to individuals enrolled in MPP? Please provide a breakdown by city, including Tijuana, Mexicali, Ciudad Juárez, Piedras Negras, Nueva Laredo, and Matamoros.

What number and percentage of individuals sent back under MPP are currently in shelters?

Response: DHS defers to the Department of State (DOS) regarding humanitarian resources available outside the United States.

Question#:	4
Topic:	Coordination with International Organizations
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: What, if any, coordination has DHS undertaken with the Government of Mexico or other organizations, including the International Organization for Migration (IOM) and UNHCR, to ensure that individuals sent back under MPP have access to shelter space?

What, if any, coordination has DHS undertaken with the Government of Mexico or other organizations, including IOM and UNHCR, to ensure that available shelter space meets minimum standards of humane conditions? What minimum standards are applied?

Response: Questions regarding the U.S. Government's engagement with international humanitarian organizations operating in Mexican territory should be directed to the Department of State.

Question#:	5
Topic:	Investigating Violence in Mexico I
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On September 9, 2019, you were asked whether you are doing anything to mitigate increasing reports of extortion and kidnapping of individuals returned to Mexico. In response, you confirmed that you have read reports on the topic and stated that "Mexico has provided nothing to the United States corroborating or verifying those allegations."

Substantial confirmed reports indicate that people in MPP proceedings face regular kidnappings and disappearances. A Human Rights First report published in October 2019 concluded that there were over 343 documented instances of violent attacks against individuals enrolled in MPP.

What steps has CBP taken to investigate allegations of violence and harm to individuals returned to Mexico, including the allegations in the Human Rights First report?

How many times has DHS requested that the Mexican government investigate an allegation of harm against an individual returned to Mexico?

Do you commit to providing this Committee with the outcome of any such investigation, whether it is conducted by the Mexican government, DHS, or another entity, within one week of it becoming available to you?

Response: DHS works closely with GOM counterparts to ensure the returns of MPP migrants from the United States to Mexico are conducted in an orderly and safe manner.

Mexican officials have noted that, upon arrival in Mexico, individuals in MPP are provided with documentation to remain legally in the country, in addition to a tax number that allows them to apply for work authorization, and receive medical care and enroll in school. In the case that migrants in Mexico are victims of crime, they may request an U.S. Citizenship and Immigration Services (USCIS) fear screening when they report for their scheduled hearing in the United States.

Question#:	6
Topic:	Red Team Report
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On November 15, 2019, BuzzFeed News reported that a team of senior DHS officials examined the MPP program and drafted a "Red Team" report. Reportedly, this document evaluated the efficacy of MPP and recommends several policy changes to improve MPP.

I joined my colleagues earlier this month to request release of this "Red Team" report no later than November 30, 2019. To date, the report has not been published. Will you commit to releasing this report within one week?

Response: Any such report would speak to DHS law enforcement operations and be pre-decisional and deliberative in nature. DHS welcomes continued conversation with Congress about MPP implementation.

Question#:	7
Topic:	Pregnant Women
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: CBP guidance dictates that vulnerable immigrants, such as unaccompanied minors and migrants with known physical/mental health issues, are not amenable to MPP. Despite the stated policy, multiple reports indicate that immensely vulnerable individuals have been returned to Mexico, where they face inhumane conditions that place their lives at risk each and every day.

On September 26, 2019, the ACLU filed a complaint with the DHS Inspector General detailing 18 accounts from pregnant women seeking asylum who were returned to Mexico. These pregnant women reported inadequate access to food and water, lack of access to medical care, and unsafe living conditions in Mexico.

Do you agree that pregnant women require heightened physical care and medical attention?

Are individuals being considered for enrollment in the "Remain in Mexico" program affirmatively asked whether they are pregnant before they are enrolled?

If a woman discloses that she is pregnant after she has already been enrolled in the program, is she automatically disenrolled?

What policies, procedures, or standards govern whether a pregnant woman will be enrolled in MPP?

Under what circumstances might DHS be aware that a woman is pregnant, but enroll her in MPP anyway?

Response: CBP does not affirmatively ask if an individual is pregnant. Pregnancy itself is not determinative for MPP amenability or exclusion but it may be considered in the totality of circumstances when making an amenability determination. Such determinations are made on a case-by-case basis. To the extent there are other considerations, the port director and chief patrol agent have discretion to review each case on an individual basis. Aliens who are not amenable to MPP are described in the publicly available MPP Guiding Principles, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.

Question#:	8
Topic:	Currently Waiting in Mexico
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: As of October 13, 2019, DHS has returned over 50,000 migrants to Mexico under MPP. According to reports, this includes over 16,000 children, including nearly 5,000 children under the age of 5 years old of which nearly 500 are infants.

Please provide the total number of individuals, including members of family units who are currently waiting in Mexico under the MPP.

Response: We cannot provide a number as to who may be 'currently waiting' in Mexico. Some individuals may no longer be in Mexico if they have, for example, voluntarily returned to their home countries or illegally entered the United States.

Question: Please provide the total number of individuals, including members of family units who have been returned to Mexico under the MPP to date.

Response: In Fiscal Year (FY) 2019, a total of 44,283 single adults and members of family units were processed under MPP and returned to Mexico to await removal proceedings.

Question: Please provide the total number of children under the age of 18 who have been returned to Mexico, with a breakdown of those who were members of a family unit.

Response: In FY 2019, 15,562 juveniles were processed under MPP, all of whom were part of family units. Unaccompanied alien children (UACs) are not amenable to MPP. Therefore, no UACs were processed under MPP and returned to Mexico.

Question: Please provide a breakdown of the ages of the children who have been returned to Mexico, including those who were part of a family unit.

Response: The table below provides the breakdown by age for juveniles returned under MPP in FY 2019. The table below depicts juveniles that were encountered as part of a family unit. UACs are not amenable to MPP.

Age	FY19 Juvenile Returns (Family Units) under MPP Total
Under 5	4,172
5 - 12	7,447

Question#:	8
Topic:	Currently Waiting in Mexico
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

13- 17	3,943
Total Juveniles	15,562

Question#:	9
Topic:	MPP Impact
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Will you commit to commencing an assessment of the impact of MPP on children within 30 days and share the report with Congress when it is complete?

Response: All juveniles who are placed into MPP are done so with their family unit, as UACs are not amenable to MPP. We do not currently have plans for such a report.

Question#:	10
Topic:	Access to Counsel I
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Under current law, the government does not provide counsel to individuals in removal proceedings. If they wish to be represented, they have to retain their own lawyer. DHS has stated that individuals enrolled in MPP will be afforded the same access to counsel as other individuals in removal proceedings. However, DHS and DOJ encourage asylum seekers to engage with counsel through unrealistic, costly, or deficient channels—including remote communication technology often not available in Mexico or in person prior to an immigration hearing at the assigned court facility.

How many total individuals returned to Mexico under MPP, by number and percentage, have secured counsel to represent them in immigration proceedings?

Response: CBP does not track this information since counsel is typically secured outside of CBP custody. DHS respectfully defers to the Department of Justice (DOJ).

Question: For each immigration court that is currently hearing cases for individuals enrolled in MPP, please provide:

the total capacity for any provided meeting space for individuals to meet with attorneys,

Response: CBP has only been involved in the deployment and sustainment of the temporary immigration hearing facilities (IHF) located in Laredo and Brownsville, Texas. Due to the colocation of the temporary IHFs at CBP Land Ports of Entry (LPOEs) and previous experience with soft-sided facilities, CBP was selected by DHS to lead the deployment efforts for the temporary IHFs when the program was introduced in late 2018/early 2019. CBP currently holds the facilities sustainment contract through January 2021. Questions regarding other immigration hearing facilities should be directed to DOJ/EOIR.

IHF Location	Number of Dual Purpose Rooms Available	Capacity Per Room	Total Capacity
Laredo Bridge I	28	7	196
Brownsville-Gateway	120	7	840

Question: applicable policies and procedures for attorneys seeking to utilize any such available space, and

Question#:	10
Topic:	Access to Counsel I
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Response: Consistent with DOJ's Executive Office for Immigration Review (EOIR) policy and practice, individuals interested in observing immigration court proceedings can do so at either the physical court locations where the Immigration Judge is located, or at the Immigration Hearing Facilities (IHF) in Laredo and Brownsville. Anyone can request access to the IHFs in Laredo and Brownsville by appearing in-person at those facilities. Access will be granted on a case-by-case basis and, if at an IHF, in accordance with DHS rules and guidelines, as well as EOIR rules, orders, and regulations with preference given to those involved in legal proceedings.

Removal proceedings are generally open to the public in all immigration courts, with limited exceptions, as specified by law. Notably, some aliens may be presenting issues in their case that relate to sensitive matters that they may not want to be made public and are subject to privacy protections. As in any federal building, there are access control measures to ensure the safety of those who appear for official business. Lawyers and accredited representatives are provided the time and private space to meet with clients prior to hearings.

Question: applicable policies and procedures to ensure that individuals who are transported to court for their hearings have sufficient time to meet with attorneys before and after their hearings.

Response: Section 240(b)(4)(A) of the Immigration and Nationality Act (INA) provides that an alien in removal proceedings before an Immigration Judge "shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings." Similarly, Section 292 provides that "[i]n any removal proceedings . . . the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel . . . as he shall choose."

All aliens in MPP when initially processed are provided a list of low cost legal service providers that they may choose to contact. To facilitate access to counsel, aliens in MPP are instructed to arrive at the designated POE at the time and date indicated on the tear sheet, which is a time early enough to be processed at the POE and arrive at court before their scheduled hearings to provide time (no less than one hour) to meet with their retained attorney or accredited representative. Aliens can also communicate with their counsel of choice on their own accord.

Question#:	11
Topic:	Access to Counsel II
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: What steps has DHS taken to ensure that individuals returned to Mexico, and therefore required to reside outside the United States until their hearings, can speak to a lawyer if they choose to do so? Please provide any relevant documentation, including any guidance provided to CBP personnel.

Response: CBP provides each MPP migrant with a list of pro bono legal service providers upon placement into MPP. On the day of their scheduled court hearing, migrants are transported to the immigration court at least an hour ahead of their scheduled hearing times to provide time for them to meet with counsel before the hearing. Aliens can also communicate with their counsel of choice on their own accord.

Question#:	12
Topic:	Fabricating Hearing Dates
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: The Mexican authorities will only admit migrants to Mexico under the MPP if they have a future court hearing that the United States requires them to attend. On November 7, 2019, the Los Angeles Times reported that CBP agents in California and Texas have been distributing documents to migrants reflecting future court dates even if the immigration judge did not schedule a future hearing. Based on these inaccurate documents, individuals are then returned to Mexico. These cases are generally closed because the individual has been granted relief from removal or the judge has otherwise terminated proceedings. As a result, CBP's cruel practice results in individuals who have won their cases in immigration court nonetheless being returned to Mexico.

On November 7, 2019, the Los Angeles Times reported 14 instances of CBP officers at the San Ysidro port of entry in California fabricating hearing dates to send individuals back to Mexico.

Are you aware of this practice?

Response: CBP is aware of the allegations published in the *Los Angeles Times*. CBP's Office of Professional Responsibility is actively investigating these allegations.

Question: What steps, if any, has CBP taken to investigate these allegations?

Response: CBP's Office of Professional Responsibility is investigating these allegations. The investigation is ongoing and remains open at this time.

Question: If no investigation has been initiated, do you commit to commencing one? Please provide information to this Committee regarding any resulting disciplinary actions taken by CBP within one week of any such disposition.

Response: An investigation is in progress.

Question#:	13
Topic:	Terminated Removal Proceedings
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Is it DHS policy to return individuals whose removal proceedings have been terminated, including based on a grant of relief by an immigration judge, to Mexico? Please provide any relevant documentation.

Response: Cases that result in a grant of relief by an immigration judge are not terminated. Rather, they are brought to completion and appropriate status is bestowed upon the individual, unless the decision is appealed by DHS. If DHS appeals, the individual is still allowed to remain in the U.S. until a final determination is reached on the case.

When cases are terminated by an immigration judge, DHS may appeal the decision. Aliens subject to MPP are placed into removal proceedings under Section 240 of the INA, which include a full immigration court process just like any other alien in removal proceedings pursuant to Section 240 of the INA. Aliens generally remain in MPP throughout the duration of their removal proceedings, which extend through the resolution of any appeals to the Board of Immigration Appeals (BIA). Thus, MPP migrants can be returned to Mexico while awaiting the result of DHS's appeal of a case terminated by an EOIR immigration judge.

Question#:	14
Topic:	Training
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Will you commit to providing guidance and training to CBP personnel prohibiting the preparation of any documents, including Notices to Appear and "tear sheets" providing information pertaining to the individuals' enrollment in MPP, reflecting inaccurate future hearing dates?

Response: Agents receive several courses concerning the preparation and service of legal forms while attending the Academy. Supervisors and senior agents assist in the review of documents to ensure those documents are carefully and accurately prepared. Passenger processing to include Notices to Appear are taught in CBP Officers Basic Training and Post-Academy Training.

Question#:	15
Topic:	Tracking Children
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: A federal court ordered an end to the zero tolerance policy in June 2018 except under narrow circumstances to protect the welfare of children. It has been reported that over 1,000 children have been separated from their parents since June 2018. Reportedly, approximately 20% of those separations affect children under five years old. A September 27, 2018 DHS OIG report found "no evidence" of a system that could track children who were removed from their parents. It has been over a year since that finding was published. According to recent reports, family separation is ongoing and is sometimes based on insufficiently substantiated or erroneous evidence,

How is CBP tracking children who have been separated from their parents?

Response: U.S. Border Patrol (USBP) uses a unique identifier for all family units in its electronic system of records. A unique number is assigned to all members of that particular family unit, and remains with each individual even if he or she is separated from other members of the family. If a child must be separated from his or her parent or legal guardian, CBP documents the reason for that separation in its electronic system of records. U.S. Immigration and Customs Enforcement (ICE) has access to this information.

As of May 2019, the Office of Field Operations (OFO) secondary processing systems automatically generate a family unit number when the family meets the established criteria. As with USBP, the number is assigned to all members of that particular family unit and remains with each individual even if they are separated from other family members. OFO's secondary systems require documentation and manager approval, when applicable, for a separation. The secondary processing systems also provide an audit log assigned for each family that shows who has been added or removed from the family unit, and that documents separations, including the time, reasons, and, if applicable, identified fraud.

Question: How has CBP worked with other agencies, such as the Department of Health and Human Services, to ensure reunification of children with their parents?

Response: CBP does not play a significant role in the reunification process. However, for UACs, CBP is a party to protocols between U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), ICE, and CBP that outlines the process for sharing information about UACs when they are referred to ORR. CBP shares information about the adult(s) who accompanied the UAC at the time of the original encounter (including information about a parent or legal guardian separated from the child), as well as information about potential sponsors. This information is usually transferred electronically from CBP's E3 system into the ORR UAC Portal.

Question#:	15
Topic:	Tracking Children
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Also, every week, CBP staff work with counterparts at ICE and ORR to update an interagency document tracking ongoing separations. The document enables the agencies to maintain a shared understanding of the numbers and identities of separated children and parents.

Question#:	16
Topic:	Children Separated
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: How many total children have been separated from their parents since June 2018, when the president issued an order ending the practice?

Response: Between June 27, 2018, and September 30, 2019, there were 1,121 children meeting this criteria;

Pursuant to CBP's June 27, 2018 *Interim Guidance on Preliminary Injunction in Ms. L v. ICE*, one of the following reasons must be present and articulated when a child is separated from either parent:

- Referral of a parent/legal guardian for prosecution of a felony;
 - This includes parents/legal guardians referred for prosecution by CBP, and includes those parents/legal guardians who are transferred to another jurisdiction on an extraditable warrant.
- Parents/legal guardians that present a danger to the child.
- The parent/legal guardian has a criminal conviction(s) for violent misdemeanors or felonies.
 - A parent/legal guardian who has been arrested, but not convicted, may not be separated based solely on the arrest.
 - A parent/legal guardian may not be separated based solely on the fact that they have had prior immigration removals.
- The parent/legal guardian has a communicable disease.
 - Prior to separation, local OCC should be contacted, and the communicable disease should be clearly documented in the system of record.

Question: How many of those children were under the age of five when they were separated?

Response: Between June 27, 2018 and September 30, 2019, a total of 218 children under the age of 5 were separated; again, for the reasons outlined above, including that the parent/legal guardian presented a danger to the child or has a criminal conviction(s) for violent misdemeanors or felonies.

Question#:	17
Topic:	Continuing to Separate
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: In responses to my questions for the record, Commander Jonathan White, Deputy Director for Children's Programs at HHS stated, "separation of children from their parents is both a traumatizing event in its own right, and has the potential to increase long-term behavioral and physical health risks to children of prior traumatic exposures, such as violence in home country or on the journey to the United States."

However, children have continued to be separated from their parents. Administration officials have testified before Congress that the justification for continuing to separate children from their parents is to protect the child. However, there have been reports of children being separated from their parents for reasons that appear insufficient to justify such a drastic action that traumatizes children and their families. For example, a father was recently separated from his children because of a previous ticket for driving with an expired license. There have been additional reports indicating that parents may have been separated from their children for failing to change their diapers.

Under what circumstances are children being separated from their parents at the border? Please include whether prior minor traffic violations or failing to change a diaper are included in the list of circumstances that CBP considers dangerous to the welfare of a child.

Response: CBP will not separate the child(ren) from the parent(s)/legal guardian(s) unless a specific criterion provided above in CBP's June 27, 2018 *Interim Guidance on Preliminary Injunction in Ms. L v. ICE* is met.

Question: Do you commit to issuing guidance clarifying that minor traffic-related violations alone or failing to change a child's diaper does not justify separating families?

Response: CBP issued guidance to the field outlining when CBP personnel may separate a child from their parent. See CBP's *Interim Guidance on Preliminary Injunction in Ms. L. v. ICE*.

Question: Can you commit to providing this Committee with the guidelines used by CBP when making determinations to separate children from their parents at the border within 30 days?

Response: This guidance is articulated in CBP's *Interim Guidance on Preliminary Injunction in Ms. L. v. ICE*. Please see attached.

Question#:	18
Topic:	HIV Status
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: There have also been reports of parents being separated from their children due to their HIV positive status. Brian Hastings, chief of Border Patrol, made a statement during a congressional hearing that HIV status justifies separating children from their parents because HIV is a communicable disease. However, HIV is not a communicable disease, and saying that it is to justify separating parents from their children stigmatizes immigrant communities. Mr. Hastings later walked back his comments and then-Acting Secretary McAleenan stated that he did not believe that HIV status alone justifies family separation.

Has any formal guidance been issued to ensure that parents who have an HIV positive status are not separated from their children on that basis?

If no formal guidance has been issued, do you commit to issuing guidance and providing that guidance to this Committee?

Response: An inadmissible alien's existing medical condition, such as a HIV-positive status, alone is not a sole basis for separation.

In accordance with the CBP Medical Directive, issued December 30, 2019, an inadmissible alien who has a claimed medical condition is referred to a medical practitioner for evaluation. The results of medical evaluation and determination, which are made by medical professionals, may require further treatment, such as hospitalization; and may necessitate separation of a parent from a child(ren). This separation is recorded in the CBP computer system of record, as noted in the April 1, 2019 muster on documenting family separations.

If further medical treatment/hospitalization is required for one of the inadmissible aliens, then placement of the remaining inadmissible alien members of the family unit, who are not referred for further medical treatment/hospitalization is requested. If custodial placement of the child is obtained before the alien under further medical treatment/hospitalization is released, DHS/ICE and HHS/ORR work to reunify the family unit in accordance with existing Ms. L guidance.

If an inadmissible alien who arrived as part of a family unit and hospitalized is released from the hospital prior to placement of the remaining family members, the family would be reunified by DHS/CBP; and placement of the entire family unit in DHS/ICE custody is requested

Question#:	19
Topic:	Adults Returned to Mexico
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: There have been reports of children being separated from adults, including parents, where the children are sent to the custody of the Office of Refugee Resettlement and the adults are enrolled in MPP and therefore sent to Mexico. As a result, the child remains in the United States and the adults they traveled with are returned to Mexico, separating them from one another.

In how many cases was a child referred to the Office of Refugee Resettlement but an adult (or adults) with whom the child was traveling was enrolled in MPP and returned to Mexico?

How is DHS tracking families to facilitate communication between the child and parent and permit reunification in the future in these cases?

Response: Accompanied children who arrive with their legal parent or guardian are not being separated from that adult as a result of MPP. Accompanied children may only be separated pursuant to CBP's *Interim Guidance on Preliminary Injunction in Ms. L. v. ICE*. In the case of unaccompanied children (including those children traveling with family members who are not the parent(s) or legal guardian(s) of the children), there is no legal separation by definition because the children are unaccompanied. CBP does not track the disposition of non-parent and non-guardian adult family members in relation to a UAC apprehended at the same time.

In general, if a parent or legal guardian must be separated from his or her child, he or she also would not be amenable to MPP, and thus would not be processed for return to Mexico.

That said, DHS has seen a trend whereby, after families are processed under MPP and returned to Mexico, some minor children return to the United States unaccompanied. Such children are referred to ORR as UACs.

In its electronic system of records, USBP uses a unique identifier for all family units. A unique number is assigned to all members of that particular family unit, and remains with each individual even if he or she is separated from other members of the family. If a child must be separated from his or her parent or legal guardian, CBP documents the reason for that separation in its electronic system of records. ICE has access to this information.

As of May 2019, the OFO secondary processing systems automatically generate a family unit number when the family meets the established criteria. As with USBP, the number is assigned to all members of that particular family unit and remains with each individual even if they are separated from other family members. OFO's secondary systems require documentation and manager approval, when applicable, for a separation. The secondary processing systems also

Question#:	19
Topic:	Adults Returned to Mexico
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Primary:	The Honorable Kamala D. Harris
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provide an audit log assigned for each family that shows who has been added or removed from the family unit, and that documents separations, including the time, reasons, and, if applicable, identified fraud.

DHS defers to ORR regarding communication between UACs in its care and potential sponsors and family members.

Question#:	20
Topic:	CBP Leadership
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: When speaking about diversity in an interview for "Axios on HBO," you were asked about the lack of diversity among top immigration officials, who are exclusively white males. Although you stated that individuals should be solely judged by the content of their character, the Washington Examiner reported that you complained in a closed-door meeting about the number of "white faces" at Border Patrol's national office and planned to appoint a Hispanic women as Border Patrol Chief.

In your response to the Washington Examiner, you said that you are "committed to leading an agency that is inclusive of everyone, no matter their ethnic background." However, there is clearly a lack of diversity within senior leadership positions at CBP.

What steps will you be taking in order to ensure inclusivity at CBP, particularly among the senior-most levels of CBP personnel?

Response: I am committed to ensuring that the agency I lead reflects the diversity found both throughout our Nation and within CBP's workforce. As personnel transition to new roles and senior leadership openings within CBP occur, one of my key focuses when selecting new leaders will be that their backgrounds and experiences are varied and representative of our workforce. I will also expect new leaders to foster a culture of diversity within our workforce.

Question#:	21
Topic:	Future Hires
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Current and former CBP personnel were found to have been in a social media group called "I'm 10-15." The group contained a series of derogatory remarks and graphic images targeting immigrants fleeing prosecution in their home countries.

Given the importance you have placed on one's character, will you commit to ensuring that any future hires at any level within CBP do not have prior involvement in hateful online private groups like the one described above?

Response: CBP is committed to doing everything possible to ensure the integrity and trustworthiness of our workforce. All applicants, contractors and employees at CBP are subject to the highest levels of background investigation and reinvestigation. Applicants for law enforcement positions must complete a polygraph examination. All personnel in Critical Sensitive/National Security-designated positions, which is the vast majority of the CBP workforce, are subject to continuous evaluation in which we monitor for criminal and suspicious activity.

Question#:	22
Topic:	Iranian Student Visas
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On September 20, 2019, the New York Times reported that Iranian students traveling to the United States to attend schools primarily within the University of California system, were barred from boarding their flights. The Muslim ban included exemptions for Iranian students to study in the United States. These students had already secured their visas, packed for school, prepared to depart, and said goodbye to their friends and family. As such, the fact that these students were barred from boarding their flights is deeply concerning.

Why were Iranian students with visas barred from boarding their flights? Please include in your answer whether any agency issued a policy requiring revocation of the visas and, if so, which agency did so and its basis for doing so.

Response: As part of its border and immigration security mission, CBP vets all international travelers on commercial aircraft before they board the aircraft. In cases where a traveler does not have appropriate documentation, or would otherwise be deemed inadmissible upon arrival, CBP, through its Immigration Advisory Program (IAP), recommends to the carrier that they not board the traveler. Also, a traveler's immigration status and visa eligibility may change over time.

During FY 2019, IAP locations reported four instances in which they made a recommendation to an air carrier destined to the United States that they deny boarding of Iranian nationals holding F status. All four of these instances were for documentary deficiencies. Further details on some of these individuals involve confidential visa record information, but we are happy to work with our colleagues at the Department of State to provide those details if useful to the Committee.

Question: Is there any other policy or procedure currently in effect that caused these students to be barred from boarding their flights?

Response: No. These recommendations were offered based on long-established documentary requirements in regulations and statutes that regulate travel to the U.S.

Post-Hearing Questions for the Record
Submitted to Mark Morgan
From Senator Kyrsten Sinema

"Unprecedented Migration at the U.S. Southern Border: The Year in Review"

November 13, 2019

Question#:	23
Topic:	MPP Evaluation
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: The policy known as Migrant Protection Protocol (MPP) has been in effect for several months with approximately 58,000 migrants waiting on the southern side of the U.S.-Mexico border for their turn to access our nation's immigration courts.

What role does the safety and well-being of migrants waiting in Mexico under MPP play in the ongoing CBP evaluation of the effectiveness of the MPP program?

Response: MPP seeks to streamline existing avenues for aliens in removal proceedings who qualify for humanitarian protection in the United States to receive it; support an orderly and timely completion to U.S. immigration processes; prevent "catch and release" into the United States, including for those whose claims are later found to be non-meritorious; and provide a deterrent to illegal entry. DHS believes MPP successfully accomplishes these goals.

DHS cannot validate the number of individuals who are "waiting on the southern side of the U.S.-Mexican border." More than half of those enrolled in MPP have had their cases completed. And many whose cases have not yet been completed may no longer be in Mexico if they have, for example, voluntarily returned to their home countries or illegally entered the United States.

DHS works closely with GOM counterparts to ensure the returns of MPP migrants are conducted in an orderly and safe manner. Mexican officials have noted that, upon reception in Mexico, individuals in MPP are provided with proper documentation to remain legally in the country, in addition to a tax number that allows them to apply for work authorization. Individuals also have access to healthcare and education.

In the case that migrants in Mexico are victims of crime, they may file a criminal complaint with Mexican law enforcement authorities or request a USCIS fear screening when they report for their scheduled hearing in the United States.

Question#:	23
Topic:	MPP Evaluation
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: What data and metrics does CBP use to evaluate if MPP is working?

Response: MPP contributes to decreasing the volume of inadmissible aliens arriving in the United States on land from Mexico. CBP Enforcement Actions on the Southwest Border totaled 45,144 in October 2019. That number is 69 percent less than May 2019, when CBP had 144,116 enforcement actions.

MPP provides a streamlined pathway for aliens to defensively apply for protection or relief from removal, while upholding *non-refoulement* obligations through screenings of fear in Mexico. As of July 17, 2020, a total of 532 aliens have been granted relief by an immigration judge, and as of June 18, 2020, a total of 18,011 aliens had been referred to USCIS for a *non-refoulement* assessment interview based on an assertion of fear of persecution or torture in, or returning to, Mexico.

MPP provides a pathway for aliens to proceed efficiently through the U.S. immigration court process, as compared to non-detained dockets. As of July 17, 2020, 69 percent of MPP cases had been brought to completion by an immigration judge.

MPP decreases the number of aliens released into the interior of the United States for the duration of their U.S. removal proceedings. As of July 17, 2020, 63,623 aliens had been enrolled in MPP and prevented from being “caught and released.”

For additional metrics on MPP, please see the following links:

- <https://www.dhs.gov/publication/metrics-and-measures>

https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf

Question: Can CBP share with my office the latest CBP evaluation of the MPP program?

Response: The goals, metrics and measurements listed in the previous answer can be found at: https://www.dhs.gov/sites/default/files/publications/migrant_protection_protocols_metrics_and_measures_0.pdf.

Question#:	24
Topic:	Protecting Rights
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: How do policies such as MPP protect the legal rights of asylum seekers?

Response: Pursuant to MPP, aliens arriving from Mexico who are amenable to the process, and who in an exercise of discretion the officer determines should be subject to the MPP process, are issued an NTA and placed into section 240 removal proceedings. They are then transferred to await proceedings in Mexico.

Through section 240 removal proceedings, those in MPP have access to the United States' immigration court system, where they can file a Form I-589, Application for Asylum and for Withholding of Removal with the immigration judge.

If at any time during processing in the United States, a migrant who is subject to MPP affirmatively expresses a fear of return to Mexico, they will be referred to USCIS for screening before being returned to Mexico.

If USCIS determines that an alien who affirmatively states a fear of return to Mexico is more likely than not to face torture or persecution on account of a protected ground, the alien may not be returned to Mexico. Officers retain all existing discretion to process (or re-process) the alien for any other available disposition, including expedited removal, Notice to Appear, waivers, or parole. An alien may not be subject to expedited removal, however, in the event that they were previously processed for MPP and returned to Mexico, and subsequently affirmatively stated a fear of return (upon arrival at a POE for their immigration court hearing, while attending an immigration court hearing, or at any other time in DHS custody), and is then determined to more likely than not face persecution or torture in Mexico.

Question#:	25
Topic:	Drug Trade Threat
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Everyone agrees that drugs flowing across our southern border is a problem. What capabilities does CBP need, that it doesn't already have, in order to meet the threat that the drug trade across our southern border poses to public safety? I would welcome your thoughts both from the perspective of the Border Patrol and from OFO.

Response: CBP has successfully developed both intelligence and physical capabilities to mitigate narcotics threats at and between the ports of entry. To keep pace with adversaries and emerging threats, CBP must enhance both information technology infrastructure across the agency and physical infrastructure at ports of entry and along the border to capitalize on emerging technology. To meet emerging threats, CBP must 1) ensure data processing and analytical systems are up to date and invest in analytical modeling capabilities to more effectively support intelligence capabilities; 2) update and explore new non-intrusive inspection technologies to ensure effective, efficient coverage in multiple environments; and 3) increase the use of canine support and ensure state-of-the-art equipment is available to streamline safe and effective identification of narcotics. The Administration has continually proposed the addition of CBPOs through an increase in Customs User Fees, IUF, etc.

Question#:	26
Topic:	Capabilities Gap Analysis
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: To help me better understand the challenges your department faces, can you please provide my office a copy of CBP's latest Capabilities Gap Analysis?

Response: The report was submitted to the House Appropriations Subcommittee on Homeland Security and the Senate Committee on Appropriations, Subcommittee on Homeland Security, on October 22, 2019. Please contact the appropriate committee for a copy of the report.

Post-Hearing Questions for the Record
Submitted to Mark Morgan
From Senator Jacky Rosen

"Unprecedented Migration at the U.S. Southern Border: The Year in Review"

November 13, 2019

Question#:	27
Topic:	Child Welfare Professionals
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: As of November 2019, how many child welfare professionals has U.S. Customs and Border Protection (CBP) hired to work in detention facilities at the U.S. southern border? Please identify the job titles and professional certifications of any individuals hired.

Response: CBP takes a comprehensive approach to child welfare consistent with the standards established in the CBP Directive 2210-004, December 2019, *Enhanced Medical Support Efforts* and CBP *National Standards on Transport, Escort and Detention and Search* (TEDS) standards, as well as other applicable policies and standards.

Over the last year, CBP has implemented a process to continuously review and enhance its medical support processes based on best practices and operational requirements. This process of ongoing review and advancement is detailed in the *Enhanced Medical Support Efforts* Directive. CBP has increased the number of contract medical personnel to 850, with more than 350 on duty any given day at more than 45 facilities, covering all sectors and field offices along the Southwest border with 24/7 onsite medical support. Additionally, CBP presently maintains a staff of nearly 1,600 law enforcement personnel certified as emergency medical technicians or paramedics, with no less than 100 more to be trained in FY 2020.

CBP utilizes a family medicine based advanced-practice provider approach. The medical professionals are physician assistants and nurse practitioners who are trained, licensed, and credentialed to conduct assessments and provide care to the population in CBP custody, including children, pregnant women, and adults. These professionals are aided by other certified health professionals, such as emergency medical technicians and certified nursing assistants. The clinical providers are supported by regional and national medical directors (licensed physicians) and multiple pediatric advisors (board-certified pediatricians and members of the American Academy of Pediatrics). CBP's pediatric advisors provide ongoing consultation to medical providers across the Southwest border on a regional basis.

Question#:	27
Topic:	Child Welfare Professionals
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

CBP has intentionally designed and implemented a multi-phased process to avoid single points of failure and to identify and refer serious illness, injury, or infection in people in our custody. Consistent with the *Enhanced Medical Support Efforts Directive*, CBP will seek to expand medical support along the southwest border according to the following three phases:

- Phase 1 – Officers/agents will observe and identify potential medical issues for everyone in custody. Individuals in custody are advised to tell CBP personnel or medical personnel about medical issues of concern. Those individuals identified with medical issues of concern will receive a health interview, a medical assessment, and/or be referred to the local health system for evaluation;
- Phase 2 – A health interview is always conducted on children under the age of 18 using CBP Form 2500, a standardized health interview questionnaire; and
- Phase 3 –Medical providers conduct medical assessments, which are more detailed medical evaluations, not only on all tender age children (ages 12 and under) in CBP custody, but also on people with a positive response that requires a mandatory referral based on the CBP Form 2500 and any other person in custody with a known or reported medical concern.

Basic, non-emergent medical cases can be diagnosed and treated onsite by our contract medical personnel, while urgent, emergent, complex, or serious cases are referred to the local health system / emergency room as appropriate. Referral decisions are based on the professional judgement of agents/officers and on the clinical judgement of contracted medical personnel. We continue to rely heavily on the local health system and have a low threshold for referral to emergency room or hospital for complex, acute, urgent, or recurrent conditions. Our medical personnel conduct follow-up care when the individual returns, to include enhanced medical monitoring as appropriate for persons identified with ongoing medical issues.

CBP utilizes a family medicine based advanced-practice provider approach. The medical professionals are physician assistants and nurse practitioners who are trained, licensed, and credentialed to conduct assessments and provide care to the population in CBP custody, including children, pregnant women, and adults. These professionals are aided by other certified health professionals, such as emergency medical technicians and certified nursing assistants. The clinical providers are supported by regional and national medical directors (licensed physicians) and multiple pediatric advisors (board-certified pediatricians and members of the American Academy of Pediatrics). CBP's pediatric advisors provide ongoing consultation to medical providers across the Southwest border on a regional basis.

Question#:	28
Topic:	Detention Facilities Access for NGOs
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Please provide a copy of DHS and/or CBP's policy guidance related to access to detention facilities for non-governmental organizations (NGOs).

Response: CBP does not have written guidance related to NGO access to short-term holding facilities.

Question: Does CBP allow NGOs to make recurring scheduled visits at all CBP detention facilities? If not, why not?

How frequently are NGOs permitted access to CBP detention facilities where migrant children are detained?

Which NGOs are currently allowed access to CBP detention facilities to observe conditions? Please provide the names of the NGOs and the locations they are permitted to access.

Response: CBP considers NGOs' requests to access its short-term holding facilities on a case-by-case basis, taking into account the nature of the request, operational requirements, and the need to ensure the safety of CBP personnel and individuals in CBP custody.

Question#:	29
Topic:	NGO Services for Detained Children
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Does CBP allow NGOs to provide programming services for detained children and other critical services? If not, why not?

Response: NGOs do not currently provide programming to children in CBP's facilities, but services are allowed on a case-by-case basis for children who are part of a family unit. UACs are transferred as quickly as possible to HHS, while children who are U.S. citizens are turned over to Child Protective Services in the state in which they were apprehended.

Question#:	30
Topic:	Investigating Violence in Mexico II
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Recent news reports highlight the prevalence of kidnapping, robbery, extortion, rape, sexual exploitation, and violent crimes against individuals who were returned to Mexico under the Migrant Protection Protocol (MPP) program.

What steps is DHS and/or CBP taking to investigate reports of violence and crimes committed against asylum applicants awaiting their U.S. court hearing dates in Mexico?

Response: First, it is important to note that not all migrants in MPP are asylum seekers. MPP migrants are all placed into Section 240 removal proceedings under the INA. During their hearings, some do end up filing a I-589 Application for Asylum and Withholding of Removal, while many do not.

DHS works closely with GOM counterparts to ensure the returns of MPP migrants are conducted in an orderly and safe manner.

The GOM committed to authorize the entrance of all third-country national placed into MPP while they await the completion of their removal hearing. Upon reception in Mexico, individuals in MPP are provided with proper documentation to remain legally in the country, in addition to a tax number that allows them to apply for work authorization. Individuals also undergo a medical screening and have access to enroll in education. Mexican officials have stated their intent to abide by international *non-refoulement* commitments.

In the case that migrants in Mexico are victims of crime, they may file a criminal complaint with Mexican law enforcement authorities or request a USCIS fear screening when they report for their scheduled hearing in the United States.

Question#:	31
Topic:	Credible Fear
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: What is CBP's protocol for asylum seekers who express a credible fear of remaining in Mexico after being placed in the MPP program?

Response: CBP does not make determinations regarding the validity of claims related to fear of return to Mexico. Individuals processed for MPP who affirmatively state they have a fear of return to Mexico are referred to USCIS for screening. If USCIS determines that an individual who affirmatively claims a fear of return to Mexico is more likely than not to face persecution or torture in Mexico, the individual will be processed for another pathway and not returned to Mexico. MPP is separate from the expedited removal/credible fear process. Individuals processed for MPP are placed into removal proceedings under INA Section 240 rather than expedited removal.

Question: Please provide a copy of any and all DHS policy guidance related to the MPP program.

Response: The MPP Guiding Principles are publicly available and can be found at:
<https://www.cbp.gov/document/guidance/migrant-protection-protocols>

Question#:	32
Topic:	Exempt from MPP
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS has stated that certain individuals with disabilities or health conditions are not subject to MPP. Which asylum seekers are exempt from the MPP program? Please provide the list of exemptions.

Response: Seeking asylum is not a prerequisite for inclusion in MPP, yet all individuals in MPP have the opportunity to seek asylum or relief from removal from the Immigration Judge. The following individuals are not amenable to MPP:

- Unaccompanied alien children,
- Citizens or nationals of Mexico,
- Aliens processed for expedited removal,
- Aliens in special circumstances:
- Returning LPRs seeking admission (subject to INA section 212)
- Aliens with an advance parole document or in parole status
- Known physical/mental health issues
- Criminals/history of violence
- Government of Mexico or USG interest,
- Any alien who is more likely than not to face persecution or torture in Mexico To the extent there are other considerations, the port director and chief patrol agent have discretion to review each case on an individual basis.

Question#:	33
Topic:	MPP Screening
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: How are individuals screened for disabilities or health conditions before being subject to deportation under MPP?

Response: MPP is not deportation. Deportation is the formal removal of a foreign national from the U.S. for violating an immigration law. Before being returned to Mexico under MPP to await removal proceedings, all individuals are medically screened to determine if they are fit for travel. CBP Directive 2210-004, December 2019, *Enhanced Medical Support Efforts*, states CBP will conduct a health interview for all individuals in CBP custody and a medical assessment on every juvenile in custody under 18 years of age, as well as on all adults in custody who require follow-up based on the information provided during the health interview.

CBP will refer all individuals in custody to the appropriate level of healthcare, if needed, after medical assessments are complete and based on the consultation and professional opinion of the relevant credentialed medical personnel or at the direction of the supervisory CBP officer or USBP agent. CBP contracted medical professionals, or other Federal, state, and local credentialed healthcare providers, will normally conduct medical assessments.

Question#:	34
Topic:	Collaborating with Mexico
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Are DHS and/or CBP collaborating with the Mexican government and law enforcement authorities to protect vulnerable asylum seekers awaiting their court hearings?

Response: If at any time during processing in the United States, a migrant who is subject to MPP or potentially subject to MPP affirmatively states a fear of return to Mexico, they are referred to USCIS for screening before being returned to Mexico.

If USCIS determines that an alien who affirmatively states a fear of return to Mexico is more likely than not to face torture or persecution on account of a protected ground, the alien may not be processed for MPP. Officers retain all existing discretion to process (or re-process) the alien for any other available disposition, including expedited removal, Notice to Appear, waivers, or parole. An alien may not be subject to expedited removal, however, in the event that they were previously processed for MPP and returned to Mexico, and subsequently affirmatively stated a fear of return (upon arrival at a POE for their immigration court hearing, while attending an immigration court hearing, or at any other time in DHS custody), and is then determined to more likely than not face persecution or torture in Mexico.

On June 7, 2019, the United States and Mexican governments issued a joint declaration in which GOM committed to provide third-country nationals placed into MPP with access to healthcare, education and employment. DHS believes that the Mexican federal, state and local governments are in the best position to provide security in Mexico.

Question#:	35
Topic:	Transferring to Mexico
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: What is the process for transferring individuals and families subject to MPP to Mexico?

Response: The process for transferring individuals and family units processed under MPP to Mexico is determined by local arrangements between CBP and Mexico's National Migration Institute. CBP works closely with its GOM counterparts to ensure the returns of MPP migrants are conducted in an orderly and safe manner. Mexican officials have noted that, upon reception in Mexico, individuals in MPP are provided with proper documentation to remain legally in the country, in addition to a tax number that allows them to apply for work authorization.

Question#:	36
Topic:	Resources Provided
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: What resources does DHS/CBP provide asylum seekers when they are placed under MPP?

Response: CBP provides all individuals in MPP who are given an NTA, including those who may be seeking asylum, with a list of free or low-cost legal providers. EOIR maintains this list.

Question#:	37
Topic:	MPP Wait Times
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: What is the range and average time that asylum applicants subject to MPP have waited in Mexico for their U.S. court hearings?

Response: DHS's goal is for each MPP migrant to have his/her first master calendar hearing within 90 days of being placed into MPP. The length of proceedings is different for each migrant; some only require one or two hearings, while others may have to reset their master calendar hearings several times before the merits of the case are heard. Data on the range and average time for MPP cases should be referred to the Department of Justice's Executive Office for Immigration Review.

Question#:	38
Topic:	Appearing at Hearings
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: The areas surrounding many of the ports of entry at the southern border are extremely dangerous. Reports indicate that individuals subject to MPP who are required to attend scheduled court hearings are ordered to report to the ports of entry at 4:30 A.M. for court appearances that begin hours later. At that time, there is usually no public transportation available, and often parents are traveling with young children.

What measures are DHS and/or CBP taking to ensure that asylum applicants can safely appear at their scheduled court hearings?

Response: On June 7, 2019, the United States and Mexican governments issued a joint declaration in which GOM committed to provide third-country nationals placed into MPP with access to healthcare, education and employment. DHS believes that the Mexican federal, state and local governments are in the best position to provide security needs in Mexico.

Question: Why are asylum seekers ordered to report to ports of entry at 4:30 A.M.? Please provide any and all policy guidance/related to the transfer of migrants from Mexico to the U.S. for scheduled court hearings.

Response: Individuals in MPP are instructed to arrive at the POE four hours prior to their scheduled hearing times to ensure they can be processed into the United States, transferred to the court, and have at least one hour available to speak with a lawyer, should they have one.

Question#:	39
Topic:	Flu Vaccinations
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Recent reports confirm that CBP did not implement a flu vaccination program during the 2018-2019 flu season despite the recommendations and warnings from the Centers for Disease Control. During the 2018-2019 flu season, the flu contributed to the death of three migrant children detained in U.S. custody.

Why did the agency decide not to implement a flu vaccination program during the 2018-2019 flu season?

Response: As a law enforcement agency, CBP lacks the infrastructure and capability to function as a public health agency or medical provider. Flu programs are much more complex than simply administering injections. All immunization programs are complex public health undertakings that pose significant operational, medical, legal, and logistical challenges that would not only delay processing, but prolong time in custody. Such programs require verification of medical history, allergy and immunization records, informed consent, and specialized cold storage for vaccines.

The two-week period required for a flu vaccine to go into full effect could extend well beyond the period of CBP custody. CBP holding facilities are primarily for short-term processing and holding. Consequently, CBP does not have detention-level medical support. Based on CBP's short-time holding limitation and the logistical demands of a comprehensive vaccination program, a vaccination program is not a feasible option for CBP. ICE and HHS have robust medical support services that can provide the appropriate immunizations.

While CBP did not implement a flu vaccination program during 2018-2019, CBP has addressed all of the CDC recommendations, including the underlying conditions which informed the CDC consideration of flu vaccines. CBP is working with DHS HQ, CWMD, CMO and other stakeholders to address public health measures such as vaccinations for persons in custody. CBP enhanced its medical efforts and increased the number of medical professionals who screen and provide appropriate medical care for all individuals in our custody.

Question: Does CBP plan to implement an aggressive flu vaccination program now that the 2019-2020 flu season has started? If not, why not?

Response: Recognizing the negative impacts a potential flu outbreak could have in CBP facilities, we have systematically enhanced medical support capabilities along the Southwest border, including those capabilities related to the diagnosis and treatment of flu. CBP has addressed all of the CDC recommendations, including the underlying conditions which informed the CDC consideration of flu vaccines. CBP is working with DHS HQ, CWMD, CMO and other

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Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

stakeholders to address public health measures such as vaccinations for persons in custody. The CDC recommendation were issued in a year in which CBP had a record number of families and children in our custody and, at the same time, faced significant challenges processing people out of our custody. This situation resulted in crowding and prolonged stays in custody.

Since that time, CBP has taken steps to ensure that medical efforts, including flu response, are carried out appropriately and aggressively. These actions include: establishing onsite medical teams; enhancing early identification/diagnosis; on-site rapid testing; providing antiviral treatment (i.e., Tamiflu) and prophylaxis as appropriate; enhancing our infection prevention and control measures; enhancing our referral and follow-up capabilities, and improving our tracking and reporting capabilities. We work closely with public health officials from state and local jurisdictions as well as the CDC on public health and infectious disease concerns. Our contract medical support personnel are trained, licensed, and credentialed to provide assessment and treatment for people in our custody, including children.

Question: What is CBP's health guidance for vulnerable populations such as children, elderly individuals, and pregnant women who are exposed to the flu virus while in detention? Please provide a copy of that guidance.

Response: Currently, CBP provides medical support to all individuals in custody in accordance with CBP policy, CBP TEDS, and the *Enhanced Medical Efforts Directive*. CBP agents and officers conduct initial field triage to identify suspected urgent or emerging medical issues and can activate emergency medical services (i.e., 911) or transport individuals to emergency rooms when appropriate. Where available, CBP emergency medical technicians can provide additional field triage, the initial medical response, and facilitate a transfer to the local health system. CBP relies heavily on local health systems, including emergency rooms and hospitals. CBP endeavors to expedite the transfers of illegal immigrants in our custody to ICE and UACs to HHS. Both ICE and HHS have more robust medical support capabilities.

CBP recognizes the unique challenges of providing medical support to children, elderly individuals, and pregnant women in our custody. CBP has consulted broadly with a number of internal and external medical and pediatric subject matter experts including coordination and consultation with multiple HHS and other senior U.S. Government care experts.

CBP contracted medical support personnel are trained, licensed, and credentialed to provide assessment and treatment for the population in custody, including children, elderly individuals, and pregnant women. CBP has significantly enhanced its medical support capabilities related to flu control, including: establishing onsite medical teams, enhanced early identification/diagnosis, providing on-site rapid testing, antiviral treatment (i.e., Tamiflu), and prophylaxis, as

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appropriate; enhanced infection prevention and control measures; enhanced referral and follow-up; and improved tracking and reporting.

Question: Does CBP plan to implement its own flu vaccination program or allow outside organizations to assist in administering flu vaccinations on vulnerable populations? If not, why not?

Response: Vaccination programs are complex undertakings that require ongoing, dedicated, accountable personnel. CBP does not possess the infrastructure or capabilities to function as a public health agency or health organization. Considerations include the need for informed consent, collection of medical and allergy history, the requirement for controlled cold storage for vaccines, the staffing to monitor for and recognize and respond to adverse reactions, providing patient education, and ensuring appropriate documentation.

Volunteers and/or NGOs staff would have to undergo the required background investigations before they could administer vaccinations in CBP facilities. Allowing them to conduct a vaccination program in our facilities would also raise complex concerns about authority and accountability for the NGO, and there would be significant operational, security, legal, and medical challenges for CBP. CBP works closely with public health officials from state and local jurisdictions as well as the CDC regarding all public health and infectious disease issues. CBP encourages volunteers and NGOs to offer those services at local shelters serving migrants in both the United States and Mexico. Our partnering agencies, ICE and HHS, have more robust medical support services that can provide the appropriate immunizations.

Question#:	40
Topic:	Other Vaccinations
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Does CBP plan to provide vaccinations for other highly contagious diseases such as rotavirus? If so, which other vaccinations? If not, why not?

Response: CBP holding facilities are short-term processing and holding facilities. As a law enforcement agency, CBP does not possess the level of infrastructure or capabilities for complex immunization programs. These programs are complex public health undertakings, and they require verification of medical history, allergy and immunization records, collecting informed consent, and controlled cold storage for vaccines. For CBP, there are significant operational, medical, legal, and logistical challenges that would delay processing and prolong time in custody. Vaccines can take up to two weeks for full effectiveness—potentially well beyond the period of CBP custody. CBP strives to reduce time in custody and expedite the transfer of custody to ICE and HHS, where medical support services, including vaccinations, are available.

CBP remains committed to ensuring that individuals in our custody receive appropriate medical support, and we work closely with public health officials from state and local jurisdictions as well as CDC. CBP continues to enhance its medical support efforts, including the use of contract medical personnel to provide early identification, treatment, isolation, referral, infection control, and public health support for infectious diseases in CBP facilities. These medical teams are on-site 24/7 to conduct initial assessments, provide basic medical care onsite, coordinate referral to the local health system, address public health and infectious disease issues, and conduct exit interviews for health.

1300 Pennsylvania Avenue, NW
Washington, DC 20229



U.S. Customs and
Border Protection

Commissioner

June 27, 2018

MEMORANDUM FOR: Carla L. Provost
Chief
U.S. Border Patrol

Todd C. Owen
Executive Assistant Commissioner
Office of Field Operations

FROM: Kevin K. McAleenan
Commissioner 

SUBJECT: Interim Guidance on Preliminary Injunction in
Ms. L. v. ICE, No. 18-428 (C.D. Cal. June 26, 2018)

On June 26, 2018, the court granted plaintiffs' request for a nationwide preliminary injunction, enjoining the government from separating parents and legal guardians, who are detained in Department of Homeland Security (DHS) custody, from their children in certain circumstances. This interim guidance provides initial direction on compliance with that court order.

- Both at and between the ports of entry, adults who enter the United States illegally as part of a family unit (including adults who are members of two parent families) should not be referred for prosecution for 8 U.S.C. § 1325. However, ports of entry and stations may refer parents/legal guardians for prosecution for felonies.
- Parents/legal guardians may be separated from their child only for the following reasons:
 1. Referral of a parent/legal guardian for prosecution for a felony, as stated above.
 2. Parent/legal guardian presents a danger to the child.
 3. The parent/legal guardian has a criminal conviction(s) for violent misdemeanors or felonies.
 - Any questions about what constitutes a violent misdemeanor or felony should be referred to the local Office of Chief Counsel.
 4. The parent/legal guardian has a communicable disease.
 - Prior to separation, local Office of Chief Counsel should be contacted, and the communicable disease should be clearly documented in all appropriate systems of record.

Interim Guidance on Preliminary Injunction in *Ms. L. v. ICE*, No. 18-428 (C.D. Cal. 06/26/18)
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- In cases in which the parent/legal guardian has an urgent medical need that is not a communicable disease, officers and agents should attempt to keep the family together in CBP custody, or parole both for medical care or contact the local Office of Chief Counsel.
- Fraudulent claims of parental or legal guardianship relationship should be processed under current policies and procedures, consistent with the Trafficking Victims Protection Reauthorization Act (TVPRA), and should be well-documented to support such claims.
- In any instance where individuals are or claim to be a parent/legal guardian and child, any separation must be approved by a GS-14 Watch Commander/Port Director or equivalent (OFO), or a Watch Commander (USBP).
- All other claims of familial relationships (*i.e.*, not parent/legal guardian) should be processed under current policies and procedures, consistent with the TVPRA.
- Nothing in this guidance changes existing policies and procedures related to processing and holding at the ports of entry and stations, including where individuals may be held in these facilities.

Any questions about how to comply with the court order should be raised through the appropriate chain of command for contact with local Office of Chief Counsel. This guidance will be updated as needed and appropriate.

cc: All Executive Assistant Commissioners and Assistant Commissioners

Post-Hearing Questions for the Record
Submitted to Mr. Ken Cuccinelli
From Senator Kamala Harris

"Unprecedented Migration at the U.S. Southern Border: The Year in Review"

November 13, 2019

Question#:	1
Topic:	Fear of Returning
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS policy provides for a screening process to ensure that individuals are not involuntarily returned to Mexico if they are "more likely than not" to be persecuted on account of their race, religion, nationality, membership in a particular social group, or political opinion.

What percent (and number) of individuals have affirmatively expressed a fear of returning to Mexico at the time of initial enrollment in MPP?

Response: U.S. Department of Homeland Security (DHS) policies provide for a screening process for those aliens amenable for return or returned to Mexico pursuant to the Migrant Protection Protocols (MPP), to ensure that aliens are not returned to Mexico if they are more likely than not to be persecuted on account of their race, religion, nationality, membership in a particular social group, or political opinion or to be tortured. Since the beginning of MPP through December 30, 2019,¹ approximately 2,690 aliens (4.76%) subject to MPP asserted a fear claim and received an MPP fear assessment at the time of initial processing.

Question: What percent (and number) of those individuals have been screened by USCIS and been disenrolled from MPP as a result of that screening?

Response: Since the beginning of MPP through December 30, 2019, approximately 10 percent (265) of those aliens established that it was more likely than not that they would

¹ USCIS has tracked MPP fear assessments since implementation on January 28, 2019. USCIS did not specifically track whether the MPP fear assessment occurred as a result of an initial apprehension or return for an immigration court hearing until July 3, 2019.

Question#:	1
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Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

be persecuted or tortured in Mexico. Aliens who establish a fear or persecution or torture in Mexico are generally disenrolled from MPP.

Question: What percent (and number) of individuals have affirmatively expressed a fear of returning to Mexico after at least one return to Mexico?

Response: Since the beginning of MPP through December 30, 2019,² USCIS has received and completed 10,929 MPP fear referrals of aliens who claimed a fear of return to Mexico after at least one return to Mexico under MPP. This constitutes approximately 19.5 percent of more than 56,000 returns to Mexico under MPP during the same time period.

Question: What percent (and number) of those individuals have been screened by USCIS and been disenrolled from MPP as a result of that screening?

Response: Of the 10,929 MPP fear assessments U.S. Citizenship and Immigration Services (USCIS) has completed of aliens who claimed a fear of return to Mexico after at least one return to Mexico under MPP, approximately 10 percent (1,109) established that it would be more likely than not that they would be persecuted or tortured in Mexico. Aliens who establish a fear or persecution or torture in Mexico are generally disenrolled from MPP.

² See *id.*

Question#:	2
Topic:	USCIS Screening
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: What percent (and number) of individuals have been disenrolled from MPP following the USCIS screening process?

Response: As of December 30, 2019, approximately 14,358 aliens subject to MPP asserted a fear claim and received an MPP fear assessment. Of those 14,358 who received a fear assessment, 10 percent were found to have a fear of return to Mexico. Additionally, USCIS Asylum Division records indicate that as of December 30, 2019, approximately 1,536 aliens placed into MPP have asserted multiple fear claims during the MPP process (from the point of placement into MPP at the initial encounter or apprehension) and have therefore received subsequent fear assessments to determine whether circumstances have changed such that the alien has a fear of return to Mexico after having received a previous assessment that he or she did not have a fear of return. Of these 1,536 aliens who received multiple fear assessments, 14 percent were found to have a fear of return to Mexico. CBP did not return these aliens to Mexico.

Question: What percent (and number) of individuals have been disenrolled from MPP for reasons unrelated to the USCIS screening process?

Response: CBP does not capture this data set in any system of record.

Question#:	3
Topic:	Wait Impact
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On November 14, 2019, DHS announced a proposed rule that makes several modifications to the current regulations governing asylum applications, including changes to the employment authorization document process. DHS has sought to deny work permits to asylum seekers who have crossed the border between ports of entry. The administration's "metering" practice has limited the number of individuals that can seek asylum at ports of entry, causing desperate asylum seekers to be forced to cross the border between ports of entry.

The rule proposes to double the wait time for work permits for eligible asylum seekers from the current 180-day waiting period to 365 days. Reportedly, the reason for the change is to deter immigrants from filing non legitimate asylum claims in order to get a work permit.

Did USCIS conduct any analyses on the impact the proposed one year wait will have on asylum seekers' ability to support themselves as they await adjudication of their asylum cases? Please provide any relevant documentation.

Response: As required by Executive Order 12866, USCIS conducted an economic analysis of the provisions included in the Notice of Proposed Rulemaking. USCIS encourages the committee to review the [Notice of Proposed Rulemaking](#) and supplemental documents published by USCIS on November 14, 2019. The public comment period was open until January 13, 2020.

Question#:	4
Topic:	Protecting DACA Information
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On January 25, 2017, President Trump issued Executive Order No. 13,768, Enhancing Public Safety in the Interior of the United States. This executive order ended prior DHS policy that protected personally identifiable information to all persons, regardless of immigration status, and allowed for the sharing of this information with federal, state, and local law enforcement. DHS had previously stated that "information provided in DACA requests will not be proactively provided to other law enforcement entities (including ICE and CBP) for the purpose of immigration enforcement proceedings." However, it also stated that this policy was not final.

Do you commit to not sharing personally identifiable information from current DACA applicants and beneficiaries for the purposes of immigration enforcement proceedings?

Response: USCIS is continuing to comply with all existing federal court injunctions and other orders regarding the Deferred Action for Childhood Arrivals (DACA) policy for certain illegal aliens. This includes continuing to follow the DACA information sharing policy as expressed on the Instructions to the DACA request [Form I-821D](#) at pg. 13.

Question#:	5
Topic:	Advance Parole
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On September 5, 2017, DHS suspended the availability of advance parole for DACA beneficiaries, after the Trump administration ordered the termination of DACA. On January 9, 2018, the U.S. District Court for the Northern District of California issued a preliminary injunction halting the termination of DACA, while also making clear that the government continues to have the discretion to grant advance parole to DACA recipients for deserving cases. The order does not "bar the agency from granting advance parole in individual cases it finds deserving." Despite this recognition, however, USCIS states on its website that it "will not accept or approve advance parole requests from DACA recipients."

What number and percentage of DACA recipients that applied for advance parole between January 1, 2017 and September 5, 2017 received advance parole?

Response: From January 1, 2017 to September 5, 2017, USCIS received 6,768 DACA-Based Advance Parole applications of which 3,092 (46 percent) were approved.

Question: What number and percentage of DACA recipients that applied for advance parole between January 1, 2017 and September 5, 2017 did not receive advance parole?

Response: From January 1, 2017 to September 5, 2017, USCIS received 6,768 DACA-Based Advance Parole applications of which 3,676 (54 percent) were not approved. This is comprised of 132 denials and 3,544 administratively closed applications.

Question: How many DACA recipients applied for advance parole during the September 5, 2017 to January 9, 2018 period?

What number and percentage of these applications were granted?

Response: From September 5, 2017 to January 9, 2018, USCIS did not receive any DACA-Based Advanced Parole applications. .

Question: What number and percentage of these applications were not granted?

Response: From September 5, 2017 to January 9, 2018, USCIS did not deny or administratively close any DACA-Based Advanced Parole applications.

Question#:	5
Topic:	Advance Parole
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: How many advance parole applications from DACA recipients does USCIS currently have pending?

Response: USCIS currently does not have any DACA-Based Advanced Parole applications pending.

Question#:	6
Topic:	Advance Parole Discretion
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Will USCIS commit to exercising its discretion to grant advance parole to DACA recipients so they can visit loved ones at critical moments or take advantage of important educational or employment opportunities abroad?

Response: USCIS will not approve applications for advance parole for illegal aliens under the standards associated with the DACA policy. Consistent with the order from the Northern District of California, DHS is permitted to discontinue issuing DACA-based advance parole. However, on a case-by-case basis, an individual alien may be granted advance parole, as a matter of DHS's discretion, under other existing advance parole guidance.

Post-Hearing Questions for the Record
Submitted to Mr. Ken Cuccinelli
From Senator Jacky Rosen

"Unprecedented Migration at the U.S. Southern Border: The Year in Review"

November 13, 2019

Question#:	7
Topic:	SAVE System Update
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Beginning earlier this year, Nevada TPS holders were unable to renew their driver licenses because USCIS failed to update TPS data in its Systematic Alien Verification for Entitlements (SAVE) System after it extended TPS work permits to January 2, 2020. Because of Nevada's voluntary and early compliance with the Real ID Act, the Nevada Department of Motor Vehicles relies on the SAVE System to verify immigration status.

On November 4, 2019, DHS announced that it would extend the validity of work permits for TPS holders from El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan through January 4, 2021.

TPS holders in Nevada report being denied license renewals as recently as November 2019. Why has USCIS not fully updated the SAVE system with the January 2020 TPS extension dates?

Response: The assertion in your question is incorrect. Following reports that the Nevada Department of Motor Vehicles (DMV) was denying driver's license renewals to TPS beneficiaries, and before we received your question, USCIS Systematic Alien Verification for Entitlements (SAVE) was in contact with and responded to Nevada DMV officials regarding this matter. The Nevada DMV informed SAVE that the Nevada DMV's information system was incorrectly preventing the DMV from completing additional SAVE verification steps that are required to obtain current immigration status information for some TPS beneficiaries. SAVE also requires these additional verification steps for other situations, such as when an applicant does not agree with the SAVE response or the agency suspects that an applicant presented a fraudulent immigration document. As with all agencies that use SAVE, DMVs are responsible for following SAVE program requirements for proper processing and completion of cases. On October

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Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

14, 2019, Nevada DMV told SAVE that it made the needed changes to its information system to comply with DHS requirements and thus to address this problem.

USCIS has also updated SAVE to provide the January 2020 automatic extension of certain TPS-related documents, as well as a later automatic extension of these documents through January 4, 2021, as part of the initial verification response that SAVE provides to Nevada DMV.³ First, on September 20, 2019, SAVE enhanced its initial verification logic to automatically provide the January 2, 2020 Employment Authorization Document (Form I-766 EAD) expiration date when an eligible El Salvador, Haiti, Sudan, or Nicaragua TPS beneficiary presented an EAD reflecting an applicable original expiration date in 2019. Second, on November 8, 2019, per the additional EAD auto-extension DHS provided on November 4, 2019, SAVE further enhanced its initial verification logic to provide the January 4, 2021 expiration date when eligible a TPS beneficiary under the designations of El Salvador, Haiti, Sudan, Nicaragua, Honduras and Nepal presents an EAD whose validity was extended to that date. Please note that since the verification logic was updated, SAVE provides EAD automatic extension dates as part of its initial verification response only if there are no data mismatches or other issues requiring review through the SAVE additional verification process.

Question: Given USCIS' previous delay in updating its database, how will USCIS ensure that the SAVE system is updated fully and in a timely manner for the new extension date of January 4, 2021?

By when can Nevada TPS holders expect the SAVE system to reflect the January 2021 work permit extension?

Response: As noted above, SAVE updated the verification logic to provide an end date of January 4, 2021 on November 8, 2019.

Question: Who at USCIS is responsible for updating the SAVE system? Please provide their name, title, and contact information to follow up.

Response: Please direct any further questions regarding Nevada DMV SAVE verifications to the USCIS Office of Legislative and Governmental Intergovernmental Affairs at 202-272-1940.

³DHS published a Federal Register notice with information about the additional automatic extension of certain TPS-related documents issued to qualified TPS beneficiaries under the designations of El Salvador, Haiti, Sudan, Nicaragua, Honduras and Nepal. See 84 FR 59403 (Nov. 4, 2019).

Question#:	8
Topic:	Coordinate with Local Agencies
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Does USCIS coordinate with agencies in Nevada with respect to updating the SAVE system?

Response: Yes, please see the response to Question 7, above.

Question#:	9
Topic:	Fee Increase
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS recently published a notice of proposed rulemaking to increase USCIS application fees for naturalizations, DACA, and a new fee for asylum seekers.

Response: USCIS is fee funded and statutorily required to publish a new fee schedule every two years. Please see the Notice of Proposed Rulemaking (NPRM) (84 FR 62280 - 62371) located at: <https://www.federalregister.gov/documents/2019/11/14/2019-24366/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>.

Question: Why is the agency increasing fees for citizenship and DACA renewal applications?

Response: The rule proposes to adjust fees to levels sufficient to cover the full cost of the adjudication and naturalization services, as required by statute.

Question: What metrics did USCIS use to determine the proposed fee schedule?

How much revenue does USCIS expect to generate as a result of its proposed fee increase?

Response: The fee rule and its supporting documents in the docket contain a detailed description of the data that were used to determine the proposed fees. When conducting a fee review, USCIS reviews its recent operating environment to determine the appropriate method to assign costs to immigration benefit requests. USCIS uses activity-based costing (ABC), a business management tool that assigns resource costs to operational activities and then to products and/or services. USCIS uses commercially available ABC software to create financial models. These models determine the cost of each major step towards processing immigration benefit requests and providing biometric services. This is the same methodology that USCIS used in the last five fee reviews, and it is the basis for the current fee structure.

USCIS uses two types of volume data in the fee review: workload and fee-paying volume. Workload volume is a projection of the total number of immigration benefit requests that USCIS will receive in a fiscal year. Fee-paying volume is a projection of the number of applicants, petitioners, and requestors that will pay a fee when filing requests for immigration benefits. Not all applicants, petitioners, or requestors pay a fee. Those applicants, petitioners, and requestors for whom USCIS grants a fee waiver or

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to whom an exemption applies are represented in the workload volume, but not the fee-paying volume. Applicants, petitioners, and requestors who pay a fee fund the cost of processing requests for fee-waived or fee-exempt immigration benefit requests.

USCIS uses statistical modeling, immigration receipt data from the last 15 years, and internal assessments of future developments (such as annualized data prepared by the USCIS Office of Performance and Quality (OPQ)) to develop workload volume projections. All relevant USCIS directorates and program offices are represented on the USCIS Volume Projection Committee (VPC). The VPC forecasts USCIS workload volume using subject matter expertise from various directorates and program offices, including the Service Centers, National Benefits Center, USCIS Refugee, Asylum, and International Operations Directorate, and regional, district, and field offices. Input from these offices helps refine the volume projections. The VPC reviews short- and long-term volume trends. In most cases, time series models provide volume projections by form type. Time series models use historical receipts data to determine patterns (such as level, trend, and seasonality) or correlations with historical events to forecast receipts. When possible, models are also used to determine relationships between different benefit request types. Workload volume is a key element used to determine the USCIS resources needed to process benefit requests within established adjudicative processing goals. It is also the primary cost driver for assigning activity costs to immigration benefits and biometric services in the USCIS ABC model.

USCIS uses historical revenue and receipt data to determine the number of applicants or petitioners who paid a fee for each immigration benefit or other immigration request. Total revenue for an immigration benefit request is divided by its fee to determine the number of fee-paying immigration benefit requests. Fee-paying receipts are compared to the total number of receipts (workload volume) to determine a fee-paying percentage for each immigration benefit request. When appropriate, projected fee-paying volume is adjusted to reflect filing trends and anticipated policy changes.

USCIS completion rates are the average hours per adjudication of an immigration benefit request. They identify the adjudicative time required to complete (render a decision on) specific immigration benefit requests. The completion rate for each benefit type represents an average. Completion rates reflect what is termed “touch time,” or the time an employee with adjudicative responsibilities actually handles the case. This does not reflect “queue time,” or time spent waiting, for example, for additional evidence or supervisory approval. Completion rates do not reflect the total processing time applicants, petitioners, and requestors can expect to wait for a decision on their case after USCIS accepts it.

Question#:	9
Topic:	Fee Increase
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
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USCIS requires employees who process requests to report adjudication hours and case completions by benefit type. Adjudication hours are divided by the number of completions for the same time period to determine an average completion rate. In addition to using this data to determine fees, completion rates help determine appropriate staffing allocations to handle projected workload. OPQ, field offices, and regional management scrutinize the data to ensure accuracy. When data is inconsistent and/or anomalies are identified, OPQ contacts the reporting office to resolve and make necessary adjustments. USCIS has confidence in the data, given the consistency of reporting over the last several years. The continual availability of the information enables USCIS to update cost information for each fee review.

Table 3 from the NPRM summarizes USCIS' projected cost and revenue differential. If DHS proceeds with Scenario A of the proposed rule and receipts materialize as forecasted, then new fees may generate approximately \$4,670.5 million per year to recover USCIS' average annual costs.

Question#:	10
Topic:	Internal Deliberations
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Please identify the U.S. government agencies and the individuals who participated in USCIS's decision to adjust the fee schedule.

Did the White House participate in these conversations? If so, who was involved?

Response: Consistent with longstanding executive branch policy, USCIS respectfully declines to discuss or disclose information that is deliberative, pre-decisional, and/or attorney-client privileged.

Question#:	11
Topic:	Vulnerable Individuals
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: How will USCIS ensure that these vulnerable individuals and families who may not be able to pay the application fees can still apply?

Response: The rule proposes to limit the forms eligible for a fee waiver to those listed in Table 7: Statutory Fee Waiver Categories and Associated Forms. Accordingly, many forms would not be eligible for a fee waiver, except in limited circumstances where the law requires that a waiver be made available based on the circumstances of the applicant.

As stated in the proposed rule, USCIS believes that making these changes to the fee waiver policy would assure that fee paying applicants do not bear the increasing costs caused by application fees being waived. DHS is in the process of reviewing and analyzing all the comments received on the proposed rule and will consider each of them in developing the final rule.

Post-Hearing Questions for the Record
Submitted to Mr. Derek Benner
From Senator Kamala Harris

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"Unprecedented Migration at the U.S. Southern Border: The Year in Review"

Question#:	1
Topic:	Medical Services for Romero
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Tania Romero is a 48-year old Honduran mother who was detained at the Irwin County Detention Center in Georgia since August 2019, when she was arrested for traffic-related violations. In 2016-when her son was a junior at Pomona College in California-Ms. Romero was diagnosed with Stage 4 oral cancer. After hospitalization, treatment, and surgery, Ms. Romero required ongoing medical care and has difficulty eating, among other day-to-day challenges that require medical attention. Nonetheless, she was detained until her reported release last week-approximately three months after her arrest.

When did Immigration and Customs Enforcement (ICE) first become aware that Ms. Romero suffered from a serious medical condition?

What medical services did Ms. Romero receive from the date that she entered U.S. custody until the date that she was released? Please provide all relevant documentation with your response, including reports of any assessments she received as well as requests made by her, her family, her attorneys, or medical professionals on her behalf.

Response: U.S. Immigration and Customs Enforcement (ICE) takes very seriously the health, safety, and welfare of those in its care. Please note, ICE is unable to provide comment on specific case information without a signed privacy waiver for the alien in question. As a result, if you desire any specific information pertaining to this case, ICE will need a privacy waiver completed and signed by the subject authorizing the agency to disclose this information to you.

Question#:	2
Topic:	Medical Consent
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On October 1, 2019, Nebane Abienwi, a 37-year-old Cameroonian national detained at Otay Mesa Detention Center in California, died at the Chula Vista Medical Center. According to the ICE Detainee Death Review, Mr. Abienwi suffered a brain hemorrhage, was placed on ventilator-assisted breathing, and was eventually removed from ventilator support. According to the death review, while at Otay Mesa, Mr. Abienwi fell out of his top bunk and experienced a series of medical symptoms, resulting in the calling of a medical emergency before being transported to the Chula Vista Medical Center where he eventually died.

According to the death review, "Mr. Abienwi's wife was notified of Mr. Abienwi's death" at 12:38 PM on October 1, 2019. His ventilator support was discontinued later that afternoon.

What are ICE's policies and procedures governing consent to medical actions when a detained individual is incapacitated?

Response: The Otay Mesa Detention Center is subject to ICE Performance-Based National Detention Standards (PBNDS) 2011.

PBNDS 2011 Section 4.7, *Terminal Illness, Advance Directives, and Death*, Section V, *Expected Practices*, notes that a detainee in a community hospital remains detained under ICE Enforcement and Removal Operations (ERO) authority to make administrative, non-medical decisions affecting the detainee (visitors, movement, authorization of care services). However, upon physical transfer of the patient to the community hospital's care, the hospital assumes medical decision-making authority consistent with the contract (drug regimen, lab tests, x-rays, treatments, etc.) and authority over the detainee's treatment, which is exercised by the hospital's medical staff once ICE is notified of admission. To that end, the hospital's internal rules and procedures concerning seriously ill, injured, and dying patients apply to detainees.

Nevertheless, ICE manages care and the facility's health service administrator follows up on a daily basis to receive information about major developments. The Field Office Director or designee immediately notifies (or makes reasonable efforts to notify) the detainee's next-of-kin of the medical condition and status, the detainee's location, and the visiting hours and rules at that location in a language or manner that they can understand.

Question#:	2
Topic:	Medical Consent
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Additionally, ICE ERO, in conjunction with the medical provider, affords family members and others as much opportunity for visitation as possible while ensuring the safety, security, and good order of the facility.

Question: Does ICE policy require consent from a detained person's next of kin before removing a detained individual from ventilator support?

Response: PBNDS 2011 requires ICE to relinquish medical decision-making authority and authority over the detainee's treatment to the contracted community hospital once the detainee has been transferred to the community facility. The detainee remains detained under ICE ERO authority only insofar as ICE ERO retains the authority to make administrative, non-medical decisions affecting the detainee.

Question#:	3
Topic:	Releasing Remains
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: What is the specific process by which the family of an individual who died in ICE custody can secure release of the body to, for example, conduct any necessary funeral services consistent with their culture? What steps has ICE taken to ensure that they can do so?

Response: Within 24 hours of the death of an individual in ICE custody, ICE notifies the applicable consulate of the death and coordinates with consular officials, as necessary, to locate the next-of-kin. Unless consular officials are unwilling to do so, all notifications to next-of-kin are made by consular officials. If consular officials are unwilling to notify next-of-kin, ICE will telephone the person named as the next-of-kin to inform them of the death in a language he or she can understand. Within 48 hours of the next-of-kin being notified, ICE will send a condolence letter to the next-of-kin, with a copy to the applicable consulate.

ICE generally allows family members and/or next-of-kin to claim the remains of the decedent within seven calendar days of the date they are notified of the death. If the family chooses to claim the body, the family assumes responsibility for making the necessary arrangements (e.g., transportation of the body, burial) and paying any associated costs. If the family wishes to claim the remains, but cannot afford the transportation costs, ERO may assist the family by transporting the remains to a location in the United States. As a general rule, the family alone is responsible for researching and complying with airline rules and federal regulations on transporting the body; however, in some cases, ICE ERO may coordinate the logistical details involved in returning the remains. If family members cannot be located or decline orally or in writing to claim the remains, ICE ERO notifies the consulate in writing, and allows the consulate seven calendar days to claim the remains and make the necessary arrangements, including payment for such arrangements.

If neither the family or the consulate claims the remains, ICE ERO schedules an indigent burial, consistent with local procedures. However, if the detainee's record indicates U.S. military service, before proceeding with the indigent burial arrangements, ICE ERO contacts the Department of Veterans Affairs to determine whether the decedent is eligible for burial benefits.

Question#:	4
Topic:	ICE Medical Standards
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On December 14, 2018, my colleagues and I requested information regarding ICE's management and oversight of its detention facilities in California in light of DHS OIG reports detailing disturbingly substandard conditions and insufficient oversight by ICE. According to an October 4, 2019 CNN article, there have been multiple recent allegations of insufficient medical care at the Adelanto ICE Processing Center in California. Reportedly, one detained person with Type 2 diabetes received more than triple the amount of insulin he required, resulting in an overdose. In other instances, the same individual did not receive insulin, blood pressure medication, or cholesterol medication.

What standards does ICE apply to medical providers, including contractors, that are responsible for providing medical care to detained individuals?

Response: ICE adult detention facilities are governed by one of three sets of detention standards: National Detention Standards (NDS) 2000, PBNDS 2008, and PBNDS 2011 (revised in 2016). Additionally, in Fiscal Year (FY) 2019, ICE revised NDS 2000 to focus on ICE's essential requirements and to incorporate new substantive requirements. The revised NDS 2019 was issued to facilities currently operating under NDS 2000 in December 2019. Those facilities will implement NDS 2019 by March 1, 2020. Under these detention standards, detainees shall have access to a continuum of medical and mental health care services, including screening, prevention, health education, diagnosis, and treatment.

ICE detention standards require that "health care services shall be provided by a sufficient number of appropriately trained and qualified personnel, whose duties are governed by thorough and detailed job descriptions and who are licensed, certified, credentialed and/or registered in compliance with applicable state and federal requirements." Where practicable, although not contractually mandated, ICE encourages medical facilities within a detention facility to achieve and maintain current accreditation with the standards of the National Commission on Correctional Health Care.

ICE detention standards also state that a designated Clinical Medical Authority (CMA) at the facility has overall responsibility for medical clinical care pursuant to a written agreement, contract, or job description. The CMA must be a medical doctor or doctor of osteopathy. The CMA may designate a clinically trained professional to have medical decision-making authority in the event that the CMA is unavailable.

Question#:	4
Topic:	ICE Medical Standards
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

A Health Services Administrator (HSA) or the equivalent will also be designated within a detention facility to have overall responsibility for health care services pursuant to a written agreement, contract, or job description. The HSA, who is a physician or health care professional, is authorized and responsible for making decisions about the deployment of health resources and the day-to-day operations of the health services program. When the HSA maintains a position other than a physician, final clinical judgment rests with the facility's designated CMA.

The CMA, together with the HSA, establishes the processes and procedures necessary to meet medical standards. Health care personnel perform duties within their scope of practice for which they are credentialed by training, licensure, certification, job descriptions, and/or written standing or direct orders by personnel authorized by law to give such orders.

Question#:	5
Topic:	Contract Termination
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Under current ICE standards, what degree of underperformance merits termination of a contract for the provision of medical services? Please provide any relevant documentation with your response.

From FY 2017 to present, has ICE ever terminated a contract, for default, for the government's convenience, or otherwise, with a medical services provider? Please provide:

- the date of each termination;
- the detention facilities impacted by the termination; and
- the reasons for the termination.

Response: The current ICE medical services contract has a Quality Assurance Surveillance Plan (QASP). The QASP measures contract performance, to include metrics regarding staffing levels, filling/refilling positions/vacancies, nursing backfill, credentialing, privileging, deliverables, and other key performance requirements. In rendering a decision to terminate for default, ICE evaluates the totality of the vendor's performance, including the metrics measured in the QASP, and then makes a determination based on contract performance and mission needs.

To date, ICE has not terminated a contract for medical staffing services.

Question#:	6
Topic:	Contractor Disciplinary Action
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: From FY 2017 to present, has ICE taken any contractual or disciplinary action in connection with the medical services provided at any ICE detention facilities in California against any contractors or ICE facilities providing such services?

Response: In California, ICE Health Service Corps (IHSC) staffed three facilities, two of which are now closed. The Santa Ana facility closed in late 2018 and the Los Angeles Staging Facility closed in May 2019. Currently, the only IHSC-staffed facility operating in California is the Otay Mesa Detention facility.

In regard to any contractual disciplinary action in connection with the medical services provided at IHSC staffed facilities in California, IHSC issued three Contract Discrepancy Reports (CDR) from October 2016 through December 2019.

CDR 006-2016-11 was issued under contract HSCECR-12-F-00048 on November 21, 2016. The CDR related to failures to meet the minimum acceptable quality levels in two functional areas: Recruiting Staff and On-Call Support for the month of October 2016. The acceptable quality level for Recruiting Staff is to “on-board personnel within 30 days upon notification of approval for hire from the COR, as well as ICE Personnel Security cleared.” The acceptable quality level for On-Call Support is 90% or higher. This CDR was issued for several detention locations across the country and includes Otay Mesa.

CDR 006-2016-12 was issued under contract HSCECR-12-F-00048 on January 21, 2016. The CDR related to failures to meet the minimum acceptable quality levels in the functional area of On-Call Support for the month of December 2016. The acceptable quality level for On-Call Support is 90 percent or higher. This CDR was issued for several detention locations across the country and includes Otay Mesa.

CDR 0002 issued under contract 70CDCR18C0000003 is currently awaiting vendor response, therefore is not finalized. This CDR was issued December 16, 2019. The CDR relates to excessive administrative tiers at Otay Mesa that were issued in the month of November 2019 due to a failure to provide the minimum required staffing levels in accordance with Section C.15 of the contract.

The Los Angeles program field office issued a CDR (2018-0001) to GEO at the Adelanto Detention Facility on June 4, 2018, relating to medical discrepancies identified during the IHSC team visit March 6 - 8, 2018.

Question#:	7
Topic:	Grievances
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: How many grievances were filed against ICE or its contract staff since FY 2017 in connection with care provided at facilities in California? Please provide a breakdown by facility.

What number and percentage of the grievances filed at each facility related to the provision of medical care?

If ICE does not track this information, in light of the consistent reports of substandard medical care, do you commit to tracking this information moving forward?

Response: ICE ERO oversees the civil immigration detention of one of the most highly transient and diverse populations of any detention or correctional system in the world. ICE detention facilities are governed by one of three sets of detention standards:

- <https://www.ice.gov/detention-standards/2000>
- <https://www.ice.gov/detention-standards/2008>
- <https://www.ice.gov/detention-standards/2011>

ICE's detention standards protect a detainee's rights and ensures that all detainees are treated fairly by providing a procedure for them to file both informal and formal grievances, which shall receive timely responses relating to any aspect of their detention. Each facility shall have a written policy and procedures for a detainee grievance system that establishes a procedure for any detainee to file grievances.

Informal grievance resolution offers a detainee the opportunity to expediently resolve his or her cause for complaint before resorting to the more time-consuming written formal procedure. Staff at every facility shall make every effort to resolve a detainee's complaint or grievance at the lowest level possible, in an orderly and timely manner. Alternatively, a detainee may file a formal grievance at any time during, after, or in lieu of lodging an informal complaint. The facility may not impose a time limit on when a detainee may submit a formal grievance.

The following information provides the number of grievances per facility in California¹:

¹ ICE is unable to statistically report for West County Detention Facility (Contra Costa County Jail) since its contract with ICE was terminated in FY 2018.

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Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
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Adelanto ICE Processing Center

- Fiscal Year (FY) 2017:
 - Standard Grievance: 398
 - Medical Grievance: 98
- FY 2018:
 - Standard Grievance: 287
 - Medical Grievance: 219
- FY 2019:
 - Standard Grievance: 295
 - Medical Grievance: 74

Otay Mesa Detention Center

- FY 2017:
 - Standard Grievance: 473
 - Medical Grievance: 98
- FY 2018:
 - Standard Grievance: 481
 - Medical Grievance: 185
- FY 2019:
 - Standard Grievance: 407
 - Medical Grievance: 135

Imperial Regional Detention Facility

- FY 2017:
 - Standard Grievance: 213
 - Medical Grievance: 50

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- FY 2018:
 - Standard Grievance: 258
 - Medical Grievance: 43
- FY 2019:
 - Standard Grievance: 429
 - Medical Grievance: 96

Yuba County Jail

- FY 2017:
 - Grievances²: 96
- FY 2018:
 - Standard Grievance: 55
 - Medical Grievance: 9
- FY 2019:
 - Standard Grievance: 63
 - Medical Grievance: 44

ICE Mesa Verde Processing Center

- FY 2017:
 - Standard Grievance: 253
 - Medical Grievance: 42
- FY 2018:
 - Standard Grievance: 242
 - Medical Grievance: 14

² ICE notes that some facilities during previous years did not differentiate for medical grievances.

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- FY 2019:

- Standard Grievance: 327
- Medical Grievance: 77

Rio Cosumnes Correctional Center (Sacramento County)³

- FY 2017:

- Grievances: 43

- FY 2018:

- Grievances: 31

Orange County Sheriff's Office Totals⁴:

James A. Musick Facility

- FY 2017–2019:

- Standard Grievance: 25
- Medical Grievance: 1

Inmate Reception Center

- FY 2017–2019:

- Standard Grievance: 1
- Medical Grievance: 0

Theo Lacey Facility

³ The contract for the Rio Cosumnes Correctional Center was terminated in FY 2018.

⁴ ICE notes that Orange County Sheriff's Office can only report their data as combined totals rather than the fiscal year breakdown.

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- FY 2017–2019:
 - Standard Grievance: 93
 - Medical Grievance: 8

Question#:	8
Topic:	Suicides
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On October 16, 2019, BuzzFeed News reported that Roylan Hernandez-Diaz, a 43-year-old Cuban asylum seeker, died of an apparent suicide according to an internal government report. According to his wife, Mr. Hernandez-Diaz participated in a hunger strike and was placed in solitary confinement before he was found deceased in his cell on October 15. ICE released a statement that "[t]he preliminary cause of death appears to be self-inflicted strangulation; however, the case is currently ongoing investigation."

Mr. Hernandez-Diaz reportedly sought to be released from detention multiple times before reportedly taking his own life still detained in ICE custody. On September 5, 2019, a U.S. District Judge issued a preliminary injunction ordering the ICE field office in New Orleans to restore a process that permits individualized parole requests for detained asylum-seekers.

Since FY 2017, what number and percentage of total deaths in ICE custody, broken down by fiscal year, were preliminarily or eventually determined to have been attributable to suicide?

Response: From FY 2017 through FY 2019, there have been a total of six deaths in ICE custody attributable to suicide. For a breakdown by fiscal year, please see the below table.

Deaths in ICE Custody by Fiscal Year		
Fiscal Year	Total Deaths in Custody	Attributed to Suicide
FY 2017	12	3
FY 2018	9	1
FY 2019	8	2

Question#:	9
Topic:	Hunger Strikes
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: When a detained individual is deemed to be participating in a hunger strike, what policies and procedures govern ICE's response?

Response: When ICE ERO and/or detention facility staff determine that a detainee has refused meals for 72 hours or has missed 9 consecutive meals, the IHSC health staff receive a referral for detainee evaluation and possible treatment by medical and mental health providers. Referrals may also be received when a detainee declares a hunger strike and at any time prior to 72 hours. Staff assess detainees as early as possible to determine what may be motivating the hunger strike and to facilitate resolution, if possible.

Any detainee considered to be on a hunger strike is separated from other detainees for close supervision, observation, and monitoring. Detainees who engage in hunger strikes have access to all services including, but not limited to, recreation, communication assistance, interpreters, law library, attorney visits, phone calls, and television. Modifications may be made to accommodate the health status of the detainee at the time of the request.

Generally, individuals who elect to engage in a hunger strike are informed during their initial declaration that they will be monitored to ensure their safety and that involuntary care (including a nasogastric tube for administration of nutritional supplements) may be utilized if the IHSC doctor determines, and a federal district court judge agrees in a written order, that the hunger strike has become life-threatening or will have long-term health consequences for the detainee. IHSC health staff monitor and document the detainee's health, including weight and intake of foods and liquids. A full clinical and mental health assessment is completed, and a course of treatment, intervention, and follow-up is recommended.

A behavioral health provider evaluates the detainee to assess for possible psychiatric causes for the hunger strike and to provide supportive counseling that may help end the hunger strike. Medical staff make every effort to procure informed consent from detainees prior to requesting a court order for the use of a nasogastric tube. Any medical procedure or treatment performed on a detainee who is on a hunger strike is done only with the detainee's informed consent or pursuant to a court order. If the detainee refuses treatment, he/she is asked to sign a refusal form.

The physician, designee, or other health care provider explains the risks associated with the refusal of treatment. If the detainee refuses to sign the form, the physician, designee, or other health care provider must note the detainee's refusal on the form and have it

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witnessed by a second person. IHSC health care providers will always make a reasonable effort to educate the detainee regarding the health risks of the hunger strike and encourage the detainee to accept voluntary treatment and nourishment in a language and manner that the detainee understands. IHSC also contacts the local ICE Office of the Principal Legal Advisor (OPLA) field office as early as possible to discuss the hunger strike before involuntary treatment or emergency care is needed.

If ongoing assessments reveal the detainee's condition is deteriorating despite efforts to encourage food and fluid intake and the physician determines that the detainee's condition threatens the life or long-term health of the detainee, then involuntary hydration, feeding, and/or treatment may be considered once authorized through a court order. The physician notifies the facility administrator and the ICE ERO Field Office Director in writing of any proposed plan of involuntary treatment, to include involuntary hydration, feeding, and/or medical interventions (e.g., physical examination, orthostatic vital signs monitoring, daily weight, laboratory tests, application of soft physical restraints, and other medical procedures deemed necessary) for the detainee if the hunger strike continues.

Question#:	10
Topic:	Solitary Confinement
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Since FY 2017, what number and percentage of individuals were subjected to solitary confinement during their time in ICE custody, broken down by fiscal year and facility?

Response: ICE does not place detainees into solitary confinement. Instead, a detainee may be placed into a Special Management Unit (SMU). ICE defines an SMU as a housing unit for detainees in administrative or disciplinary segregation. Detainees who are placed into an SMU generally have the same privileges as detainees housed in general population. For example, they have recreation, visitation, access to the law library and telephones, clergy and legal visits, and are provided appropriate accommodations and professional assistance for disabilities and/or other special needs (e.g., medical, therapeutic, or mental health treatment) on an equal basis as those in the general population.

While ICE policy does not require that all placements in SMU be reported and tracked, the Segregation Review Management System (SRMS) is utilized to store, track, review, and report data associated with segregation placements that exceed a duration of 14 days and all placements of detainees with a special vulnerability.

ICE ERO Count of Individuals Placed in an SMU

Facility	FY 2017		FY 2018		FY 2019		FY 2020 (YTD)	
	Total	Percent	Total	Percent	Total	Percent	Total	Percent
Adelanto ICE Processing Center	400	4.40%	311	2.71%	264	2.05%	80	2.86%
Albany County Jail	0	0.00%	2	0.27%	0	0.00%	0	0.00%
Atlanta City Detention Center	13	0.47%	17	0.90%	0	0.00%	0	0.00%
Baker county Sheriff's Office	44	2.11%	42	1.83%	39	1.52%	6	0.97%
Bergen County Jail	0	0.00%	4	0.20%	0	0.00%	0	0.00%
Boone County Jail	1	0.06%	1	0.06%	6	0.36%	0	0.00%
Honolulu Federal Detention Center	1	0.47%	0	0.00%	4	2.22%	2	3.23%
Bossier Parish Correctional Center	0	0.00%	0	0.00%	1	0.08%	0	0.00%
Bristol County Detention Center	16	1.68%	10	0.88%	8	0.55%	3	0.97%
Buffalo (Batavia) Service Processing Center	56	1.79%	84	2.41%	68	2.08%	13	1.60%
Butler County Jail	1	0.93%	0	0.00%	0	0.00%	0	0.00%
Butler County Jail	1	0.09%	1	0.07%	3	0.22%	1	0.38%

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Mesa Verde ICE Processing Center	18	0.45%	1	0.02%	1	0.29%	0	0.00%
Cache County Jail	0	0.00%	0	0.00%	1	0.06%	0	0.00%
Calhoun County Correctional Center	21	1.43%	49	2.78%	33	1.99%	3	0.97%
Cambria County Jail	4	0.47%	3	0.38%	5	0.65%	0	0.00%
Caroline Detention Facility	0	0.00%	0	0.00%	27	1.00%	5	0.99%
Carver County Jail	4	1.10%	2	0.53%	2	0.68%	1	2.13%
Cascade County Jail	0	0.00%	1	0.83%	0	0.00%	0	0.00%
Cass County Jail	0	0.00%	0	0.00%	1	0.56%	0	0.00%
Catahoula Correctional Center	0	0.00%	0	0.00%	2	0.11%	0	0.00%
CCA, Florence Correctional Center	36	0.66%	24	0.35%	25	0.68%	2	0.48%
Northeast Ohio Correctional Center (Youngstown CDF)	12	1.28%	26	1.80%	27	1.56%	8	2.36%
Otay Mesa Detention Center (San Diego CDF)	95	0.94%	120	2.17%	77	1.48%	23	1.27%
Chautauqua County Jail	2	4.76%	0	0.00%	0	0.00%	0	0.00%
Charleston County Detention Center	1	0.04%	1	0.06%	5	0.21%	0	0.00%
Chase County Detention Facility	1	0.15%	0	0.00%	0	0.00%	0	0.00%
Chippewa County SSM	2	0.98%	4	1.19%	11	5.00%	0	0.00%
Christian County Jail	1	0.64%	1	0.55%	0	0	0	0.00%
Cibola County Correctional Center	23	0.74%	28	0.63%	18	0.36%	0	0.00%
Clinton County Correctional Facility	10	1.03%	2	0.20%	8	0.90%	0	0.00%
Tacoma ICE Processing Center (Northwest Det CTR)	48	0.68%	83	1.02%	88	1.12%	3	0.17%
Denver Contract Detention Facility	26	0.56%	50	0.81%	57	0.99%	8	0.70%
Dodge County Jail	0	0.00%	3	0.11%	0	0.00%	0	0.00%
Eloy Federal Contract Facility	93	1.16%	30	0.24%	54	0.39%	8	0.35%
Elmore County Jail	1	0.19%	2	0.30%	0	0.00%	0	0.00%
Elizabeth Contract Detention Facility	0	0.00%	1	0.05%	1	0.05%	0	0.00%
El Paso Service Processing Center	17	0.11%	32	0.12%	41	0.12%	6	0.12%
Essex County Correctional Facility	22	0.70%	22	0.63%	15	0.39%	0	0.00%
Etowah County Jail	19	1.29%	11	0.65%	0	0.00%	0	0.00%
Florence Service Processing Center	24	0.21%	18	0.11%	5	0.03%	4	0.16%
Freeborn County Adult Detention Center	7	0.96%	4	0.54%	13	2.32%	1	0.65%

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Immigration Centers of America Farmville	56	1.25%	78	1.71%	80	1.61%	21	1.70%
Florence Staging Center	17	0.07%	11	0.03%	0	0.00%	0	0.00%
Geauga County Jail	9	1.90%	14	2.12%	8	1.31%	3	2.56%
Glades County Detention Center	15	0.59%	18	0.53%	0	0.00%	0	0.00%
Franklin County House of Correction	2	0.27%	1	0.21%	0	0.00%	0	0.00%
Hardin County Jail	0	0.00%	0	0.00%	3	0.55%	3	1.92%
Hall county Department of Corrections	0	0.00%	0	0.00%	2	0.28%	0	0.00%
Rolling Plains Detention Center	3	0.12%	0	0.00%	0	0.00%	0	0.00%
Henderson Detention Center	55	2.21%	40	1.64%	34	1.66%	0	0.00%
Houston Contract Detention Facility	86	0.60%	85	0.51%	21	0.20%	0	0.00%
Howard County Detention Center	10	1.98%	22	3.74%	18	3.13%	1	0.70%
Hudson County Correctional Center	24	0.84%	13	0.38%	20	0.59%	5	0.81%
Imperial Regional Detention Center	36	0.61%	66	1.04%	88	1.25%	3	0.25%
Irwin County Detention Center	25	0.35%	73	0.90%	49	0.61%	0	0.00%
Folkston ICE Processing Center (D. Ray James)	10	0.38%	13	0.19%	0	0.00%	0	0.00%
Jefferson County Jail	0	0.00%	1	0.34%	1	0.39%	0	0.00%
LaSalle ICE Processing Center (Jena)	90	0.51%	122	0.76%	133	1.04%	15	0.51%
Jackson Parish Correctional Center	0	0.00%	0	0.00%	1	0.04%	1	0.07%
Johnson County Corrections Center	3	0.08%	2	0.00%	8	0.24%	4	0.88%
Kandiyohi County	0	0.00%	1	0.84%	15	5.10%	3	2.59%
Kenosha County Detention Center	13	0.95%	5	0.18%	9	0.15%	2	0.53%
Krome North Service Processing Center	56	0.65%	41	0.39%	22	0.19%	5	0.25%
Winn Corr Institute	0	0.00%	0	0.00%	23	1.04%	14	0.73%
Marshall County Jail	6	1.08%	3	0.51%	5	1.64%	0	0.00%
McHenry County Correctional Facility	8	0.37%	15	0.28%	14	0.26%	2	0.33%
Monroe County Detention Center	7	1.51%	1	0.17%	0	0.00%	0	0.00%
Monroe County Detention-Dorm	0	0.00%	0	0.00%	1	0.06%	0	0.00%
Joe Corley ICE Processing Center	2	0.03%	8	0.07%	3	0.03%	0	0.00%
Morrow County Correctional Center	0	0.00%	1	0.09%	1	0.09%	0	0.00%
Montgomery ICE Processing Center	0	0.00%	0	0.00%	31	0.20%	12	0.35%

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Northern Oregon Correctional Facility	0	0.00%	6	1.66%	0	0.00%	0	0.00%
Nevada Southern Detention Center	10	0.60%	5	0.27%	3	0.17%	0	0.00%
Oklmulgee County Jail	0	0.00%	5	0.25%	1	0.06%	0	0.00%
Orange County Jail	9	1.24%	4	0.46%	6	0.60%	0	0.00%
Otero County Processing Center	26	0.16%	7	0.05%	73	0.93%	4	0.23%
Port Isabel	16	0.07%	10	0.02%	30	0.05%	9	0.27%
Pike County Correctional Facility	55	6.70%	47	5.82%	39	2.93%	7	1.79%
Pine Prairie ICE Processing Center	56	0.74%	89	1.03%	51	0.92%	4	0.29%
Plymouth County Correctional Facility	2	0.24%	1	0.07%	7	0.49%	3	0.46%
IAH Secure Adult Detention Facility (Polk)	0	0.00%	6	0.10%	12	0.18%	1	0.09%
Polk County Jail	1	0.30%	0	0.00%	1	0.19%	0	0.00%
Prairieland and Detention Facility	2	0.04%	44	0.40%	45	0.37%	7	0.28%
Pulaski County Jail	16	0.75%	4	0.12%	16	0.41%	2	0.34%
Rio Cosumnes Correctional Center	19	1.61%	8	1.16%	0	0.00%	0	0.00%
River Correctional Center	0	0.00%	0	0.00%	48	3.59%	26	3.35%
Richwood Correctional Center	0	0.00%	0	0.00%	59	3.69%	1	0.08%
Santa Ana City Jail	4	1.14%	0	0.00%	0	0.00%	0	0.00%
Seneca County Jail	5	0.66%	5	0.64%	4	0.58%	0	0.00%
Sherburne County Jail	37	2.39%	32	1.45%	43	1.70%	10	1.51%
South Texas ICE Processing Center	81	0.56%	109	0.55%	122	0.54%	25	0.76%
Saint Clair County Jail	5	0.80%	3	0.29%	4	0.44%	0	0.00%
South Texas /Pearsall Hold Room	0	0.00%	0	0.00%	1	2.63%	0	0.00%
Stafford County Corrections	0	0.00%	0	0.00%	8	0.33%	2	0.48%
Stewart Detention Center	207	1.66%	292	1.84%	171	0.99%	15	0.39%
Suffolk County House of Corrections	13	0.61%	8	0.48%	8	0.72%	0	0.00%
Theo Lacy Facility	27	0.86%	18	0.17%	2	0.03%	0	0.00%
Torrance County Detention Facility	1	0.04%	0	0.00%	0	0.00%	1	0.14%
Tulsa county Jail (David L. Moss Justice Center)	2	0.07%	1	0.05%	0	0.00%	0	0.00%
Virginia Peninsula Regional Jail	11	2.63%	3	0.52%	6	1.43%	0	0.00%
Wakulla County Jail	0	0.00%	0	0.00%	11	0.88%	1	0.37%
Washington County Jail (Purgatory Correctional Facility)	3	2.04%	1	0.63%	0	0.00%	0	0.00%

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Committee:	HOMELAND SECURITY (SENATE)						

Webb County Detention Center (CC)	0	0.00%	0	0.00%	9	0.16%	0	0.00%
Worcester County Jail	0	0.00%	0	0.00%	5	0.55%	2	0.78%
West Texas Detention Facility	2	0.02%	1	0.01%	3	0.05%	0	0.00%
South Central Regional Jail	0	0.00%	1	0.30%	0	0.00%	0	0.00%
Wyatt Detention Center	0	0.00%	0	0.00%	1	0.18%	0	0.00%
York County Prison	99	1.58%	119	1.94%	131	2.40%	17	1.40%
Yuba County Jail	24	1.59%	21	1.47%	0	0.00%	0	0.00%

*Detention Records were extracted on December 5, 2019. SRMS tracks SMU placements that exceed a duration of 14 days and all segregation placements of detainees associated with one or more special vulnerability categories. Count of Individuals Placed in SMU: Based on a count of unique A-numbers for detainees placed in SMU during Fiscal Year (FY) 2017, FY 2018, FY 2019, and FY 2020 year-to-date. Individual detainees may be placed in SMU more than once during a period; the data provided is based on one placement per individual per fiscal year. Count of Individual Detainees Housed in Facility: Based on a count of unique A-numbers for individuals detained in the facility during the time periods specified. Individual detainees who were held at the facility in more than one fiscal year were counted one time in each period. Percent: The count of individuals placed in SMU divided by the count of Individual Detainees Housed in Facility in each period.

Question#:	11
Topic:	Mental Health Services
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Does ICE policy require the provision of mental health services, either as an assessment or as part of ongoing services provided, to individuals who participate in a hunger strike?

Does ICE policy require the provision of mental health services, either as an assessment or as part of ongoing services provided, to individuals who are placed into solitary confinement?

Response: ICE takes the health, safety, and welfare of those in its custody seriously and is committed to ensuring that all detainees receive timely access to medical services and treatment. Comprehensive medical care is provided from the moment detainees arrive through the entirety of their stay. All ICE detainees receive a medical intake screening, which includes mental health, within 12 hours of arriving at each detention facility, a full health assessment within 14 days of entering ICE custody or arrival at a facility, and access to daily sick call and 24-hour emergency care.

When a detainee has declared a hunger strike, a behavior health provider (BHP) evaluates the detainee to assess for possible psychiatric causes for the hunger strike and provides supportive counseling that may help end the hunger strike. If a detainee engaging in a hunger strike was previously diagnosed with a mental health condition or is incapable of giving informed consent due to age or illness, the healthcare provider must document this condition and treatment recommendations in the detainee's health record and appropriate medical/administrative action is taken in the best interest of the detainee. (PBNDS 2011 (revised 2016) 4.2 (C)). Only a physician may order the termination of a hunger strike treatment and the order is documented in the detainee medical record. (PBNDS 2011 (revised 2016) 4.2 (F)). Upon discontinuation of the hunger strike, healthcare personnel provide appropriate follow-up behavioral health and medical care to the detainee as clinically necessary.

ICE does not place detainees into solitary confinement. Instead, a detainee may be placed into an SMU, a housing unit for detainees in administrative or disciplinary segregation. Detainees who are placed into an SMU for administrative segregation generally have the same privileges as detainees housed in general population, including recreation, visitation, access to the law library and telephones, clergy and legal visits, and are provided appropriate accommodations and professional assistance for disabilities and/or other special needs (e.g., medical, therapeutic, or mental health treatment) on an equal basis as those in the general population.

Question#:	11
Topic:	Mental Health Services
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

PBNDS 2011 (revised 2016) 2.12 (P) provides that health care personnel shall conduct face-to-face medical assessments at least once daily for detainees in a SMU. Where reason for concern exists, assessments shall be followed up with a complete evaluation by a qualified medical or mental health professional and indicated treatment provided. A BHP or a qualified medical provider conducts a face-to-face clinical contact assessment on detainees who do not currently exhibit active psychiatric symptoms on a weekly basis while in the SMU. Additionally, a BHP or a qualified medical provider assesses detainees placed in the SMU that exhibit active psychiatric symptoms (suicidal ideations, psychosis, etc.) daily.

Question#:	12
Topic:	Preventing Suicides
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On September 27, 2018, the DHS Inspector General reported that, during an unannounced inspection at Adelanto ICE Processing Center, inspectors found nooses made of braided bedsheets hanging within cells throughout the facility. Nearly a year later, Mr. Hernandez-Diaz reportedly died of "self-inflicted strangulation."

What policies and procedures has ICE implemented to prevent suicides in ICE custody nationwide since September 27, 2018?

Response: ICE is committed to providing appropriate health care for all detainees in its custody, consistent with current law and policy. ICE detention facilities are governed by one of several sets of detention standards: NDS 2000, PBNDS 2008, and PBNDS 2011. Each set of detention standards provides suicide prevention and intervention guidance for facilities housing immigration detainees. Additionally ICE, released the NDS 2019 in December 2019 (FY 2020) to ensure high quality and consistent standards of conditions of confinement, program operations, and management expectations are met across the agency's detention system. Each set of detention stands provides suicide prevention and intervention guidance for facilities housing immigration detainees.

To develop NDS 2019, ICE assembled a working group of subject matter experts from numerous ICE and U.S. Department of Homeland Security (DHS) components, to include the DHS Office for Civil Rights and Civil Liberties (CRCL). Throughout the drafting of NDS 2019, ICE engaged external stakeholders, which included 4 non-governmental organizations, 13 sheriff's offices, and the National Sheriffs' Association.

ICE standards governing ICE Suicide and Self-Harm Prevention and Intervention Programs under ICE detention standards may be found on the following ICE websites:

- <https://www.ice.gov/detention-standards/2000>
- <https://www.ice.gov/detention-standards/2008>
- <https://www.ice.gov/detention-standards/2011>
- <https://www.ice.gov/detention-standards/2019>

Furthermore, in 2018, ICE Enforcement and Removal Operations' Custody Management Division developed the training, Suicide Prevention of Individuals in ICE Custody. Topics include Suicide Myths and Statistics, Environmental and Individual Risk Factors, Recognizing Suicide Warning Signs, What to Do and What Not to Do When Suicide Risk is Suspected, and Practice Scenarios. ICE is committed to ensuring the safety, care

Question#:	12
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Committee:	HOMELAND SECURITY (SENATE)

and security of detainees in ICE custody and staff while managing detention operations in an efficient and effective manner.

Question#:	13
Topic:	Suicide Investigations
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: In the event of a suspected suicide, what is the nature and scope of ICE's investigation?

Response: ICE takes very seriously the mental and physical health, safety, and welfare of those in our care. When a detainee passes away in ICE custody, the agency conducts a thorough review of any such occurrence to determine whether the detainee received appropriate health care in accordance with nationally recognized standards of detention health care and practices, including the National Commission on Correctional Health Care, the American Correctional Association, and ICE detention standards.

Any death that occurs in ICE custody is subject to a mortality review process and the Notification and Reporting of Detainee Death Directive. The clinical mortality review is an assessment of the clinical care provided and the circumstances leading up to the detainee's death to identify areas of patient care or system policies and procedures that can be improved. The process includes a review of circumstances surrounding the incident, facility procedures relevant to the incident, training of staff, medical/mental health reports, identification of possible precipitating factors, and recommendations for changes to the incident (e.g., policy, training or re-training, counseling, reprimand or discipline of staff identified as failing to follow applicable guidelines, or changes to operating procedures). In cases where the cause of death is suicide, ICE also conducts a psychological reconstruction in addition to the clinical review. This assessment is a written reconstruction of the detainee's life with an emphasis on factors that led up to and may have contributed to the detainee's death.

Additionally, subsequent to any death in custody, the ICE Office of Professional Responsibility External Reviews and Analysis Unit conducts an independent, objective fact-finding review of the facts and circumstances surrounding the detention and death of an individual while in ICE custody. The purpose of the review is to determine whether the deceased individual received treatment in accordance with facility guidelines and applicable ICE detention standards on healthcare, safety, and security. Findings from each detainee death review are memorialized in a detailed report to ICE leadership, which provides a chronological narrative of the detainee's time in ICE custody and identifies any areas of non-compliance with the applicable ICE detention standards.

Per reporting requirements outlined in the *Department of Homeland Security Appropriations Act for Fiscal Year 2018* and its accompanying report, ICE formally notifies Congress, non-governmental organization stakeholders, and the media, of an official report of a detainee death. Accordingly, upon completion of a comprehensive

Question#:	13
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Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

investigation, ICE is committed to making all in-custody detainee death reports public on our website at <https://www.ice.gov/death-detainee-report>.

Question#:	14
Topic:	Hernandez-Diaz Investigation
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Do you commit to providing the outcome of the investigation of Mr. Hernandez-Diaz's death referenced in ICE's statement to my office?

Response: On October 15, 2019, Mr. Roylan Hernandez-Diaz passed away in ICE custody at the Richwood Correctional Facility in Richwood, Louisiana. Mr. Hernandez-Diaz was found unresponsive in his cell and efforts by facility staff and emergency personnel to revive him were unsuccessful. He was pronounced dead at 2:21 pm local time by facility medical staff. The preliminary cause of death appears to be self-inflicted strangulation; however, the case is currently under investigation. The press release may be found online at: <https://www.ice.gov/news/releases/ice-detainee-passes-away-louisiana>.

ICE requires that providers ensure that health care for those in its custody meets or exceeds the national detention standards of care. Upon the death of a detainee in custody, ICE Health Service Corps conducts a thorough mortality review to determine whether the detainee received appropriate health care in accordance with nationally recognized standards of detention health care and practices as well as the National Commission on Correctional Health Care, the American Correctional Association, and ICE detention standards.

When a detainee passes away in ICE custody, ICE formally notifies Congress, non-governmental organization stakeholders, and the media of the death. The ICE Office of Professional Responsibility, External Reviews and Analysis Unit, conducts its own independent and objective fact-finding review of the facts and circumstances surrounding the death in order to determine whether the deceased individual received treatment in accordance with facility guidelines and applicable ICE healthcare, safety, and security detention standards. Written findings from each detainee death review are reported in detail to ICE leadership and DHS CRCL. The report provides a chronological narrative of the detainee's time in ICE custody and the care received, which will include any non-compliance with the applicable ICE detention standards.

ICE publishes a complete report on each death in ICE custody within 90 days on its website: <http://www.ice.gov/death-detainee-report>, per the reporting requirements outlined in the *Department of Homeland Security Appropriations Act for Fiscal Year 2018* and its accompanying report. The report on the death of Mr. Hernandez-Diaz is available at: <https://www.ice.gov/doclib/foia/reports/ddr-Hernandez.pdf>.

Question#:	15
Topic:	Family Case Management Program
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Report language accompanying the FY18 omnibus spending bill requires that ICE continuously explore innovative alternative-to-detention models "and prioritize the use of detention alternatives, including ATD and release on parole or bond." DHS recently terminated the Family Case Management Program, which costs an estimated \$36 per day per family.

The Family Case Management Program Close Out Report completed by ICE in February 2018 notes that the Family Case Management Program overall had a 99.3% compliance rate for court hearings attended by enrollees during the program before it was ended by the Trump Administration.

Why did DHS decide to terminate the Family Case Management Program?

In the FY19 DHS Consolidated Appropriations Act, there was approximately \$30.5 million for ICE to utilize the Family Case Management Program, a type of alternative to detention that utilizes case management to ensure family units are not detained and that they comply with their immigration proceedings.

What is the status of the implementation of this program?

Response: From January 2016 to June of 2017, ICE ERO conducted the Family Case Management Program (FCMP), a community-based alternative to detention pilot initiative that employed specially-trained case managers to encourage compliance with immigration obligations for alien families. In June 2017, after completing a top-down review of the pilot period, ICE terminated FCMP in order to invest its resources into pre-existing and more cost-effective ICE Alternatives to Detention (ATD) programs.

As directed by Congress, ICE recently incorporated many of the FCMP case management principles into its ATD program. These principles were incorporated into the current ATD Intensive Supervision Appearance Program III (ATD – ISAP III) through a contract modification and are known as Extended Case Management Services (ECMS). The same services available under the FCMP are now available through the ECMS modification with two distinct differences: ECMS is available in more locations⁵ and at a lower cost.⁶

⁵ FCMP was available in only 5 metropolitan areas while ECMS is available in any location in which ICE ERO has a C-site, which is in approximately 50 cities across the United States. C-sites are standalone facilities operated by the contractor to monitor participants selected for the ATD program.

Question#:	15
Topic:	Family Case Management Program
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

With additional funding, ICE will expand FCMP principles across more of the non-detained ATD population and continue to identify and deploy other robust case management concepts.

Out of 65 FCMP participants who completed the program, 41 were terminated due to non-compliance. As of June 2019, two years after the program was terminated, nearly 800 of the approximately 950 former FCMP Head of Household (HoH) enrollees have active cases still pending and remain in the United States. Specifically, more than 150 of the active cases are subject to a final order of removal. Of those, over 50 percent were ordered removed in absentia after failing to show up for their final hearing. FCMP enrolled approximately 950 HoH, cost more than \$17 million during the pilot period and resulted in only 15 removals from the United States, as opposed to more than 2,700 from ATD – ISAP III during the same period. FCMP cost \$38.47 per family, per day (or roughly \$16.73 per individual, per day), while traditional ATD – ISAP III costs approximately \$4.40 per individual, per day, and ECMS costs approximately \$7 per family, per day.

Furthermore, while the FCMP’s “compliance rate” was in the high 90th percentile, similar to other forms of ATD, this rate only applied to participants who showed up for their first (and possibly second) court hearing because the program ran for such a short period of time.

⁶ While FCMP was available for approximately \$38 per HoH per day, ECMS services are available for less than \$7 per HoH per day. This leads to a significant cost reduction for the government while achieving comparable outcomes.

Question#:	16
Topic:	Alternatives to Detention
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: What steps is DHS taking to explore alternatives to detention as a way to decrease the current detention population and the skyrocketing costs of ICE detention?

Response: ICE ATD program is a tool that uses technology and case management to monitor aliens' court appearances and compliance with release conditions while their removal proceedings are pending on the non-detained immigration court docket. ATD is not a substitute for detention, but instead complements immigration enforcement efforts by offering increased supervision of a portion of those aliens who are eligible to participate. As a result, rather than decreasing the detained population, which stands at approximately 50,000 aliens as of the end of FY 2019, ATD may serve as an appropriate additional layer of supervision for a subset of the 3.2 million aliens on the non-detained docket.

While ICE has expanded its use of ATD from approximately 23,000 participants in FY 2014 to 96,000 as of the end of FY 2019, this expansion has come with a number of challenges, including high levels of absconders among recently enrolled family units. In FY 2019, the absconder rate⁷ for family units was 26.9 percent, significantly higher than the 12.3 percent absconder rate for non-family unit participants, demonstrating the growing challenges such enrollments create for immigration enforcement.

Thus, while ATD can complement other immigration enforcement efforts when used appropriately on a vetted and monitored population of participants, the program was not designed to facilitate ERO's mission of removing aliens with final orders. Additionally, ERO lacks sufficient resources to keep all current participants enrolled through the pendency of their proceedings, or to locate and arrest the significant number of participants who abscond, problems which will only be exacerbated by enrolling greater numbers of participants without the addition of enforcement resources. While ERO has continued to expand the use of ATD to monitor the non-detained population in FY 2019, the program will need to be further resourced in order to appropriately monitor participants, including through the addition of officers who can locate, arrest, and remove those who fail to adhere to conditions of enrollment. Finally, while additional resources would improve the efficacy of ATD at current levels of enrollment, ERO notes that the

⁷ Absconder rates = Count of Absconders/Count of Overall Terminations. ICE calculates the percentage of absconders by looking at the overall number of aliens who concluded the ATD program in a given time period ("overall terminations"), and the number of those terminations which occurred due to a participant absconding.

Question#:	16
Topic:	Alternatives to Detention
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

program is not a viable solution for addressing the magnitude of cases on the non-detained docket, which surpassed 3.2 million in FY 2019.

**Post-Hearing Questions for the Record
Submitted to Mr. Derek Benner
From Senator Kyrsten Sinema**

view

“Unprecedented Migration at the U.S. Southern Border: The Year in Review”

COMMERCIAL, DOMESTIC AND FOREIGN TRADE.

Question#:	17
Topic:	GAO Report
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: The Government Accountability Office recently issued a report identifying actions that need to be taken to better handle, identify, and track immigration cases involving noncitizen veterans. The report found that while ICE has developed procedures for handling such cases, it does not consistently follow these policies. Some of these deported veterans have service-connected disabilities but cannot easily receive the benefits that they have earned, which might include mental health support for post-traumatic stress disorder and other invisible wounds. GAO made three recommendations to improve the handling, identification, and tracking of this population, and ICE concurred with all three.

Since the publication of that report, what actions has ICE taken to improve the way it handles the cases of non-citizen veterans who have been deported or are facing the possibility of deportation?

Response: To ensure consistent implementation of ICE's existing policies for handling cases of potentially removable aliens who are veterans of military service, ICE ERO and Homeland Security Investigations (HSI) will update officer and agent training to include lesson plans and practice exercises related to veteran status. ICE ERO and HSI will also issue a broadcast message reminding the field of existing practice.

Additionally, ICE ERO will update its guidance for completing Form I-213, Record of Deportable/Inadmissible Alien, to include information about military service and will continue to use its checklist of factors to consider when processing detainees who have military service. Also, the system enhancements will improve data entry standardization of veteran information within ICE systems. These collective actions will help ICE ensure that potentially removable aliens who are veterans receive the appropriate levels of review and consideration prior to the initiation of removal proceedings. The estimated completion date is May 30, 2020.

Question#:	17
Topic:	GAO Report
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Additionally, the ICE Office of Policy and Planning, in consultation with ICE's OPLA, ERO, and HSI, will review and clarify existing ICE guidance on the issuance of Notices to Appear (NTAs) for aliens with United States military service to properly capture veteran status information. The revised guidance will also provide instructions for ICE officers and agents charged with processing aliens with NTAs to inquire about veteran status during the initial encounter to appropriately identify and document veteran status when interviewing potentially removable individuals. The estimated completion date is May 30, 2020.

Furthermore, ICE will analyze the systems used by ICE officers and agents when processing an alien with veteran status to gather the requirements.

Specifically, ICE HSI will add data elements to its Investigative Case Management system to appropriately capture veteran status by coordinating efforts with ERO's ENFORCE Alien Removal Module (EARM). In addition, ICE ERO will enhance EARM by adding data elements for veteran status and will augment the data feed to OPLA's case management system to include the veteran information. This will in turn automate the data on veterans in removal proceedings across the agency. This effort will consist of the following milestones: requirements gathering; design; testing, estimated to be completed February 28, 2021; training, estimated to be completed by May 31, 2021; and deployment to production, estimated to be completed by June 30, 2021.

System user guides, standard operating procedures, and checklists will also be updated to provide instructions to ICE officers and agents on completing the required new military service and veteran status fields. The estimated completion date is June 30, 2021.

<p>Post-Hearing Questions for the Record Submitted to Mr. Derek Benner From Senator Jacky Rosen</p> <p>"Unprecedented Migration at the U.S. Southern Border: The Year in Review"</p> <p>Committee: HOMELAND SECURITY (SENATE)</p>	
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Question#:	18
Topic:	DACA Cases Recalendared
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: The backlog in our immigration court system is enormous - it recently reached more than a million cases - and it continues growing every day. One reason for this is the administration's decision to reschedule hundreds of thousands of cases that had previously been administratively closed. This includes cases that were closed because the individual received DACA status and was no longer deportable.

Despite these huge court backlogs, recent reports indicate an increase in ICE rescheduling DACA cases. This is despite a commitment from ICE to conduct the process in a "measured but deliberate fashion" and "consistent with the Department's priorities," a commitment made in an October 4, 2018 letter to my fellow Senator, Catherine Cortez Masto, from then-Deputy Director Vitiello.

What is ICE's purpose for rescheduling DACA cases? Please explain why ICE is costing DACA recipients time, money, and worry by sending them back to immigration court, despite their DACA protections.

To date, how many cases have been rescheduled?

How much time and resources is the agency spending on this effort?

Response: Deferred Action for Childhood Arrivals (DACA) is a form of prosecutorial discretion, which temporarily deferred any removal action against certain qualified individuals for a certain period of time. DACA, as any other form of a deferred action, does not confer or lead to any legal immigration status in the United States. Starting in 2012, immigration judges (IJs) and the Board of Immigration Appeals (BIA) began to increasingly rely on administrative closures, indefinitely suspending cases instead of actually rendering a final decision. Congress never granted such broad authority to IJs or the BIA, nor had it been delegated to them by the Attorney General. This process—where

Question#:	18
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immigration court cases were put “out of sight, out of mind”—effectively resulted in aliens remaining indefinitely in the United States without any formal legal status.

In May 2018, then Attorney General Sessions issued *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018), finding that IJs and the BIA, who lacked the general authority to administratively close cases, had improperly administratively closed hundreds of thousands of them. That decision essentially requires the re-calendaring of all currently administratively closed cases upon the motion of either the DHS or the alien, thereby charging ICE with the duty to recalibrate approximately 350,000 improperly administratively closed cases in order to correct the IJ’s incorrect application of the law. These cases, once recalendared, are to be litigated to completion, whether the alien is ordered removed or obtains relief. The re-calendaring of administratively closed cases is occurring nationwide in response to the Attorney General’s opinion, and this includes, but is not limited to, DACA recipients who were previously in removal proceedings. ICE is unable to specifically track the number of DACA recipient cases that have been re-calendared.

Under the President’s Executive Orders and pursuant to DHS guidance, ICE does not exempt classes or categories of removable aliens from potential enforcement.

Question#:	19
Topic:	DACA Guidance
Hearing:	Unprecedented Migration at the U.S. Southern Border: The Year in Review
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: What is the agency's policy guidance on DACA cases that have been administratively closed? Please provide a copy of that guidance.

Response: U.S. Immigration and Customs Enforcement does not track DACA cases that have been administratively closed in its databases. As DACA is the subject of ongoing litigation, the agency is unable to comment further at this time.



U.S. Department of Justice

Office of Legislative Affairs

*Office of the Assistant Attorney General**Washington, D.C. 20530***MAR 18 2020**

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of James McHenry Director for the Executive Office of Immigration Review of the Department of Justice, before the Senate Committee on Homeland Security and Governmental Affairs on November 13, 2019, at a hearing entitled "Unprecedented Migration at the Border: A Year in Review." We hope that this information is of assistance to the Committee.

Please do not hesitate to contact this office if we can be of additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

A handwritten signature in black ink that reads "Prim Escalona".

Prim F. Escalona
Principal Deputy Assistant Attorney General

Enclosure

cc: The Honorable Gary C. Peters
Ranking Member

Questions for the Record
James McHenry
Director
Executive Office for Immigration Review
Department of Justice

Before the Committee on Homeland Security and Governmental Affairs
United States Senate

**For a Hearing Entitled: "Unprecedented Migration at the U.S. Southern Border:
 The Year in Review"**
November 13, 2019

QUESTIONS POSED BY SENATOR LANKFORD

1. At the end of FY19, EOIR had 987,000 cases pending. How many of those are individuals who are currently awaiting proceedings in Mexico as part of the Migrant Protection Protocols?

RESPONSE: As of December 9, 2019, the Executive Office for Immigration Review (EOIR) had 33,103 pending Migrant Protection Protocols (MPP) cases, including cases that the Department of Homeland Security (DHS) has scheduled but not yet filed with a court.

2. How is EOIR notifying migrants who are waiting for their cases in Mexico that they have a court date? How much time in advance are they given?

RESPONSE: DHS schedules the initial hearing for all aliens subject to MPP and notifies the alien of that date in writing at the time of apprehension by serving the alien with a Notice to Appear (NTA). If an alien appears at a scheduled court hearing and the alien's case is continued, the alien is served in person with a hearing notice of the time and date of the next hearing. The time between service of the NTA and the first hearing varies, as does the time between hearing dates. As detained cases, EOIR endeavors to complete all MPP cases at the immigration court level within 60 days of filing the NTA.

3. Have there been any instances where individuals could not get to their hearing because they were unable to cross into the US for their case to be heard? If so, can you please provide details on what happened?

RESPONSE: EOIR does not track the specific reason why aliens do not appear for hearings, including for cases subject to MPP. As of December 9, 2019, immigration judges have issued 12,855 *in absentia* orders of removal in MPP cases. As in all cases, DHS must establish that an *in absentia* order of removal is warranted pursuant to INA § 240(b)(5).

4. What was the percent of cases in FY19 that people absconded? Does EOIR track the breakdown of absconded cases in terms of whether an asylum claim was affirmative or defensive? If so, can you please provide that breakdown?

RESPONSE: In FY 2019, immigration judges issued 89,919 *in absentia* orders of removal, accounting for 45% of all initial case completions of non-detained cases at the immigration court level.

In FY 2019, immigration judges issued 10,542 *in absentia* orders of removal in cases in which an alien had filed an asylum application, but that total does not include cases in which an alien had previously indicated a fear of return, but did not actually file an asylum application. EOIR does not break down *in absentia* removal orders issued in cases involving an asylum application between affirmative and defensive applications.

QUESTIONS POSED BY SENATOR HARRIS**Tent Courts**

On or around September 2019, the Department of Homeland Security (DHS) and Department of Justice (DOJ) opened tent facilities at various locations along the border. These facilities were apparently built to adjudicate the claims of asylum seekers subjected to the administration's so-called "Migrant Protection Protocols," or "Remain in Mexico" policy.

During hearings held at these "courts," judges appear remotely by video conference. Moreover, members of the public, including reporters and non-profit organizations, have reportedly not been permitted to observe these hearings. Attorneys who represent clients going through the proceedings have reported that they experience serious obstacles to providing representation during proceedings taking place at the tent courts.

1. Please provide a complete list of all "tent courts" currently in use to adjudicate immigration proceedings, including the dates on which each was opened.

RESPONSE: DHS currently operates Immigration Hearing Facilities (IHF)s for cases subject to the Migrant Protection Protocols (MPP) in Laredo and Brownsville, Texas. Hearings at the facility in Laredo began September 11, 2019, and hearings at the facility in Brownsville began September 12, 2019.

2. Does EOIR intend to open any additional "tent courts" at this time? If so, please provide the locations of the anticipated additional courts and the anticipated dates on which hearings will commence at each location.

RESPONSE: MPP is a DHS program, and DHS maintains and operates the IHFs associated with MPP. Accordingly, EOIR respectfully defers to DHS regarding whether it plans to establish additional such facilities.

3. What steps has EOIR taken to provide observer access to these hearings?

RESPONSE: EOIR information about observing immigration court hearings is available at <https://www.justice.gov/eoir/observing-immigration-court-hearings>. This information applies to all immigration court hearings, including those conducted for aliens subject to MPP. EOIR respectfully defers to DHS regarding any additional information and instructions regarding access to the IHFs.

Individuals appearing for hearings in "tent courts" are reportedly only able to meet with attorneys for 30 minutes before their hearings, if at all. In addition, there is no Legal Orientation Program provided to individuals who have been subjected to the "Remain in Mexico" policy and then attend their hearings at these "tent courts." Meaningful access to counsel is critical to ensuring that individuals receive a full and fair hearing, particularly when the individual has fled for his or her life from persecution in their home countries.

4. Given the physical locations of respondents who appear in “tent courts” before they arrive for their hearings, and the physical restrictions of the tent courts themselves, what steps has EOIR taken to ensure that individuals appearing at the tent courts can sufficiently meet with counsel before their hearings?

RESPONSE: DHS maintains and operates the IHFs associated with MPP. EOIR’s understanding is that DHS provides space for aliens to meet with their attorneys at those facilities, but EOIR respectfully defers to DHS for further information on this issue.

5. What steps has EOIR taken to provide Legal Orientation Program services to people appearing at the tent court hearings?

RESPONSE: The Legal Orientation Program (LOP) is a nationwide program run by a contractor who then arranges with subcontractors in different locations to provide LOP services. EOIR does not choose the subcontractors. Organizations wishing to subcontract to provide LOP services to aliens subject to MPP should contact the LOP contractor.

6. If no such programs have been provided, do you commit to providing Legal Orientation Programs to all individuals who appear at tent courts?

RESPONSE: Please see the answer to Question 5.

“Remain In Mexico” Policy

In San Diego Immigration Court, judges continue to provide the EOIR list of legal service providers to respondents who are subject to the so-called “Migrant Protection Protocols,” or “Remain in Mexico” policy. However, as its name suggests, individuals subject to that policy are required to remain in Mexico until their hearings. As such, they face greater hurdles to securing representation than individuals who are in the United States. Unsurprisingly, the American Friends Service Committee surveyed hundreds of individuals in the MPP process in Tijuana and found that only 15% were pursuing legal assistance for their asylum claims.

7. What number and percentage of respondents in immigration proceedings across EOIR are represented by counsel at any point in their proceedings?

RESPONSE: In FY 2019, the overall representation rate for pending cases in immigration proceedings was 67%. The representation rate for pending asylum cases was 87%.

8. What number and percentage of respondents subjected to the “Remain in Mexico” policy are represented by counsel at any point in their proceedings before immigration judges?

RESPONSE: Respondents sometimes appear unrepresented at their initial immigration court hearing and then receive a continuance in order to obtain

representation. Consequently, the representation data may be skewed due to the relatively recent implementation of MPP in Laredo and Brownsville. Nevertheless, as of December 2, 2019, among pending MPP cases in which the respondent has appeared for at least two hearings, the representation rate is 19%.

9. What measures has EOIR taken to ensure that individuals subjected to the “Remain in Mexico” policy are able to meet and confer with their attorneys before appearing in immigration court, both before and after they arrive at the courthouse?

RESPONSE: For aliens subject to MPP whose cases are being heard in permanent EOIR immigration court facilities, EOIR has made space available for such aliens to meet with their attorneys prior to their hearings.

For aliens subject to MPP whose cases are being heard in the IHFs, DHS maintains and operates those facilities. EOIR’s understanding is that DHS provides space for aliens to meet with their attorneys at those facilities, but EOIR respectfully defers to DHS for additional information.

My office has been informed of instances in which a respondent in removal proceedings is granted relief, but they are nonetheless returned to Mexico under the “Remain in Mexico” policy. Moreover, practitioners have reported that, even when their clients’ removal proceedings are concluded and no subsequent hearing is scheduled by an immigration judge, DHS officials nonetheless produce paperwork listing nonexistent future court dates based upon which they are returned to Mexico under the “Remain in Mexico” policy (under which Mexico requires proof of a future court date in order to accept an individual into Mexico).

On November 7, 2019, the Los Angeles Times reported that there have been at least 14 occasions on which respondents were given documentation containing inaccurate future court dates in order to ensure they are accepted back into Mexico.¹

10. What policies and procedures govern whether an individual who is granted relief by an immigration judge remains subject to the “Remain in Mexico” policy?

RESPONSE: DHS determines which aliens are subject to MPP, and EOIR respectfully defers to DHS questions regarding individuals granted relief or protection and whether they are returned to Mexico, held in ICE detention, or released, pending appeal.

11. Are you aware of instances in which inaccurate court dates have been used as the basis for returning an individual to Mexico under the “Remain in Mexico” policy?

¹ Gustavo Solis, Los Angeles Times, *U.S. border agents wrote fake court dates on paperwork to send migrants back Mexico* (Nov. 7, 2019), available at <https://www.latimes.com/world-nation/story/2019-11-07/u-s-border-agents-wrote-fake-court-dates-on-paperwork-to-send-migrants-back-to-mexico>.

RESPONSE: The referenced article refers to a “tear sheet” with an inaccurate date given to an alien by DHS, and EOIR respectfully defers to DHS for any further information on that subject. EOIR is not aware of any hearing notices issued by EOIR containing inaccurate hearing dates being used as a basis for placing an alien in MPP.

12. What steps has EOIR taken to ensure that officials across DHS utilize accurate docket information relating to EOIR proceedings?

RESPONSE: As a party to all EOIR proceedings, DHS is served with all hearing notices generated by EOIR. Additionally, a legal representative of DHS is present in person for almost every EOIR hearing, and that representative is served in person with a copy of any hearing notices generated by EOIR at a hearing. DHS also has access to EOIR’s scheduling system. Otherwise, as a component of the Department of Justice, EOIR has no authority over DHS officials, and EOIR respectfully defers to DHS for any additional information on this subject.

Legal Orientation Programs

EOIR recently established an Office of Policy and undertook a reorganization. However, EOIR did not seek stakeholder feedback during the planning process, and carried out the reorganization as an Interim Rule, instituting the changes before even receiving public comments on the changes. The result of this reorganization has been significant. Authority for adjudicatory decisions has changed hands, and the communications practices of offices have changed leading to reduced transparency. When EOIR recently reorganized, it moved the Office of Legal Access Programs, or OLAP, from the Office of the EOIR Director to the newly created Office of Policy.

13. Considering the mission of OLAP to increase access to legal representation and information and the distinct mission of the Office of Policy, why did EOIR move OLAP under the Office of Policy?

RESPONSE: OLAP and its functions most appropriately belong in the Office of Policy, which can help coordinate OLAPs work across adjudicatory components. Further, locating OLAP within EOIRs principal policy component is consistent with OLAPs role in effectuating EOIRs Nationwide Policy regarding procedural protections for detained aliens who may be deemed incompetent. This move ensures an appropriate chain of command and better management of OLAPs programs, provides for better coordination of OLAPs functions within the broader scope of EOIRs adjudicatory operations, and allows for greater flexibility in the future regarding OLAPs mission. The interim rule was not intended to change—and did not have the effect of changing—any of OLAPs functions.

14. Do you commit to convening a stakeholder meeting to maximize the efficacy of OLAP in achieving its stated mission within the newly announced structure?

RESPONSE: OLAP's functions, including its interaction with its stakeholders, have not changed following its move to the Office of Policy. EOIR continually monitors feedback from all of its various stakeholders and addresses concerns as appropriate.

The Use of Technology

EOIR has reportedly undertaken a series of purported technological advancements, including the use of increased video teleconferencing (VTC) for hearings. Although the practice has been in use since approximately 1996, its use has increased rapidly in recent years.

15. Since FY 2017, what number and percentage of individuals appeared in immigration court via VTC?

RESPONSE: The number of removal hearings conducted by VTC is below.

Hearing Date FY	I-862 VTC Hearings
2017	76,058
2018	86,337
2019	81,201

16. What number and percentage of these cases resulted in a grant of relief for the respondent?

RESPONSE: Outcomes for removal cases heard by VTC are below.

Initial Case Completion Decisions	I-862 VTC Hearings		
	FY 2017	FY 2018	FY 2019
Relief Granted	3,756	4,420	4,296
Removal	26,647	31,065	26,888
Termination	858	1,055	837
Voluntary Departure	5,665	8,084	6,431
Other	28	38	48
Total	36,954	44,662	38,500

Reportedly, EOIR has also commenced replacing interpreters in immigration courts with videos that advise respondents of their rights.

17. Before launching the new policy, did EOIR solicit feedback from any stakeholders to ensure the efficacy of the video in conveying critical rights to respondents?

RESPONSE: Contrary to media reports on this subject, EOIR has not replaced interpreters with videos. Interpreters are utilized either in person or by telephone for all hearings as necessary. The video of an immigration judge providing advisals of rights contains the same advisals of rights given by an immigration judge in person, and the content of those advisals is set by regulation. EOIR does not typically solicit feedback on regulations after they are promulgated and, thus, did not do so regarding the advisals.

18. If a respondent does not understand any aspect of the video, and there is no interpreter in the room, how can they ask any questions that they may have?

RESPONSE: Contrary to media reports on this subject, EOIR has not replaced interpreters with videos. Interpreters are utilized either in-person or by telephone for all hearings as necessary. Accordingly, if a respondent has questions after watching the video and requires an interpreter, the immigration court will obtain an interpreter to assist in answering those questions, just as it will if a respondent has questions after receiving the advisals in person from an immigration judge.

19. Which immigration courts nationwide are currently using this video?

RESPONSE: Immigration courts in Miami, New York City, Los Angeles, and San Francisco are currently using the rights advisory video.

20. Does EOIR plan to implement the videos at any additional immigration courts in the future? Please provide a complete list, including anticipated start dates for using the video.

RESPONSE: EOIR continues to consider the implementation of the rights advisory video at additional immigration court locations but does not currently have an implementation list or schedule.

21. Does EOIR plan to conduct any assessments of the efficacy of the video based on its initial rollout? If not, do you commit to doing so and providing this Committee with a copy of any resulting report?

RESPONSE: The video of an immigration judge providing advisals of rights contains the same advisals of rights given by an immigration judge in person, and the content of those advisals is set by regulation. EOIR does not typically conduct an assessment of the content of its regulations after they are promulgated and currently has no plans to do so in this context.

Maintenance of Accurate and Complete Records

According to recent reports, EOIR has provided data to TRAC, a nonprofit research organization, pursuant to TRAC's FOIA requests that contains "gross irregularities." Moreover,

based on TRAC's analysis of the data in question, EOIR has "silently but systematically" deleted nearly a million records.² EOIR has disputed TRAC's findings.

In the past, EOIR's data has been found to be inaccurate, causing the U.S. solicitor general to inform the Supreme Court of inaccuracies in relevant data in 2016.

22. Do you agree that, particularly when EOIR's data is utilized by judges to render decisions, EOIR has an obligation to ensure the data it provides is accurate?

RESPONSE: Yes. Since January 17, 2018, EOIR has maintained a formal policy that 100% of its electronic and paper records should be accurate and complete. Please see Appendix A of *Case Priorities and Immigration Court Performance Measures* (Jan. 17, 2018), available at <https://www.justice.gov/eoir/page/file/1026721/download>.

23. Do you agree that EOIR has an obligation to ensure that data available to the public is accurate?

RESPONSE: EOIR is committed to ensuring the quality and accuracy of all information it disseminates to the public. EOIR is also bound by legal restrictions on the public disclosure of certain types of information, including restrictions designed to protect the confidentiality of sensitive information. Consequently, although EOIR may withhold the public disclosure of certain types of data pursuant to law, such withholdings do not mean that EOIR's data is inaccurate.

24. What steps has EOIR taken to investigate TRAC's findings?

RESPONSE: EOIR does not delete records, and TRAC's allegations are erroneous. EOIR's CASE database is updated in real-time as case information changes; for example, an application type initially coded as "Unknown" may be subsequently changed to an actual application once the application is identified. Additionally, because the disclosure to TRAC occurs under the Freedom of Information Act (FOIA), certain data may be withheld from the disclosure pursuant to FOIA exemptions, including data related to cases involving asylum or protection claims or special protections for battered spouses and children. EOIR takes TRAC's allegations seriously and is carefully reviewing TRAC's claims. Based on that review, the purported "deletions" alleged by TRAC appear to be either real-time updates to EOIR's CASE database or records withheld pursuant to an appropriate FOIA exemption.

² Claire Hansen, U.S. News, *Research Group Finds Issues with Justice Department Immigration Data Reports* (Oct. 31, 2019), available at <https://www.usnews.com/news/national-news/articles/2019-10-31/research-group-finds-issues-with-justice-department-immigration-data-reports>.

QUESTIONS POSED BY SENATOR SINEMA

1. When improving border security and immigration, it is important to focus on what capabilities our nation needs but doesn't yet possess. I recently read an article that outlines your agency's case completion numbers for Fiscal Year 2019. EOIR completed more than 275,000 cases, the second highest number in history. However, that is only part of the story, since the total number of pending immigration cases at the end of Fiscal Year 2019 was 987,000, with some reports pegging that number even higher. I imagine hiring more immigration judge teams would help with the backlog and Congress has consistently provided authority to hire more judge teams, but I want to look past just hiring more judges and look at what else would move the needle on the backlog.
 - a. What capabilities does EOIR need, that it doesn't currently possess, to help it tackle that backlog? Are their technologies you need that can be leveraged? Do we need to look at how and where we deploy our personnel?

RESPONSE: The Department of Justice (DOJ) has proposed numerous legislative changes that would strengthen the immigration system as a whole, including consolidating federal petitions for review of immigration cases in one circuit, clarifying the so-called categorical approach, and revising statutory language that the Supreme Court has found unconstitutional vague.

Additionally, in FY 2019, DHS filed the highest number of new cases in a single year in EOIR's history, and the continued influx of illegal immigration at the border is what presently drives the backlog. In particular, significant increases in recent years in cases involving asylum applications, unaccompanied alien children, credible fear claims, and aliens who fail to appear at their hearings have taxed EOIR's resources to an unprecedented degree, and addressing these types of cases is necessary to reduce the backlog. DOJ, including EOIR, stands ready to continue to work with Congress and provide assistance on legislative proposals that would more effectively address these challenges.

2. Under the bipartisan 2019 supplemental funding bill that was signed into law on July 1, 2019, EOIR was appropriated \$45 million for the hiring of 30 Immigration Judge Teams, \$10 million for additional court space, and \$10 million for the Legal Orientation Program. In implementing that funding, how many immigration judge teams have been on-boarded as of Nov. 13, the day of the hearing, and how many new court room spaces have been identified and are being utilized?

RESPONSE: Twenty-seven (27) new immigration judges (IJs) entered on duty between the enactment of the supplemental appropriations bill and November 13, 2019, and an additional twenty-eight (28) IJs entered on duty the week of November 25, 2019. Regarding new courtroom space, EOIR identified thirty-one (31) courtrooms to which

to apply the funding provided in the supplemental appropriations bill. This funding was obligated prior to expiration at the close of the fiscal year, and EOIR expects buildout to be complete for the new spaces prior to the conclusion of 2020.

3. The policy known as Migrant Protection Protocol (MPP) has been in effect for several months with approximately 58,000 migrants waiting on the southern side of the U.S.-Mexico border for their turn to access our nation's immigration courts.
 - a. What role does the safety and well-being of migrants waiting in Mexico under MPP play in the ongoing EOIR evaluation of the effectiveness of the MPP program?

RESPONSE: DHS determines which aliens are subject to MPP, and EOIR respectfully defers to DHS questions regarding policies and procedures related to MPP. EOIR does not generally evaluate initiatives or programs undertaken by other agencies, and it is not currently evaluating MPP.

- b. What data and metrics does EOIR use to evaluate if MPP is working?

RESPONSE: Please see the response to Question 3a.

- c. Can you share with my office the latest EOIR evaluation of the MPP program?

RESPONSE: Please see the response to Question 3a.

- d. How do policies such as MPP protect the legal rights of asylum seekers?

RESPONSE: DHS determines which aliens are subject to MPP, and EOIR respectfully defers to DHS questions regarding policies and procedures related to MPP. EOIR adheres to all applicable laws in adjudicating cases and ensures that all respondents in removal proceedings, regardless of whether they are subject to MPP, receive due process under the law.

